



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

Board of Appeals Session Agenda
City Hall - Council Chambers
Thursday, October 17, 2013, 7:30 PM

I. CALL TO ORDER

II. APPROVAL OF MINUTES

A. September 19, 2013

III. SPECIAL EXCEPTION AMENDMENT

A. BOA-3237-2013 – Harold Bernadzikowski for Verizon Wireless

The application requests an amendment to Special Exception A-527(C) to permit the addition of a third carrier, utilizing 12 additional panel antennas and related ground equipment, to an existing Telecommunications Facility, which currently has two carriers utilizing nine (9) antennas and a related ground facility, all installed on SBA Towers IV Monopole MD-46713-A-03, located at 707 Conservation Lane, Gaithersburg, Maryland. The property is located in the MXD (Mixed Use Development) Zone as allowed by Section 24-160D.3.(d) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

IV. FROM STAFF

A. 2014 Board of Appeals Calendar

V. ADJOURNMENT

To confirm accessibility accommodations, please contact Caroline Seiden at 301-258-6330, or email CSeiden@gaitthersburgmd.gov.

Please turn off all cellular phones and pagers prior to the meeting. Hand held signs brought may not be displayed in a manner which disrupts the meeting, blocks the view of spectators or cameras and poses a safety concern [e.g., signs mounted on stakes]. Your cooperation is appreciated.

ANNOUNCEMENTS

The next Board of Appeals meeting will be held Thursday, November 14, 2013, at City Hall, 7:30 PM.



City of Gaithersburg

31 South Summit Avenue
Gaithersburg, Maryland 20877

DRAFT

Board of Appeals Meeting Minutes City Hall - Council Chambers Thursday, September 19, 2013, 7:30 PM

I. CALL TO ORDER

A Board of Appeals Regular Session was called to order at 7:30 PM. Members present: Harvey Kaye, Victor Macdonald, Robert Chiswell and Gene Wasserman. Staff present: Community Planning Director Trudy Schwarz, Planner Caroline Seiden.

II. APPROVAL OF MINUTES

A. Meeting held April 18, 2013

Motion was made by Robert Chiswell, seconded by Victor Macdonald that Regular Session Minutes of August 18, 2013, be approved.

Vote: 4-0

III. PUBLIC HEARINGS

A. BOA-3288-2013 - Olga Carballo and Vilma Gonzalez for Willow Hair Studio

The application requests a Special Exception to permit a hair salon at 2 Maryland Avenue, Gaithersburg, Maryland. The property is located in the R-B (Residential Buffer) Zone. The special exception is allowed by Section 24-22 (c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

Planner Seiden introduced the application and then introduced the applicants, Ms. Olga Carballo and Ms. Vilma Gonzalez.

Applicant Olga Carballo stated the full beauty shop would operate on the first floor, and the second floor would be used for storage. She stated that the shop would employ two stylists to start, but that they hope to employ up to six total. Hours of operation are planned to be Monday through Thursday 10 am to 6 pm, Friday and Saturday from 9:00 am to 7:00 pm and Sunday from 11:00 am to 5:00 pm. In response to Board Member Macdonald, Ms. Carballo confirmed that they would have one manicure/pedicure employee.

Board Member Chiswell asked to applicants to discuss the availability of parking. Co-applicant Vilma Gonzalez informed the Board that there are six parking spaces in the rear of the lot and an additional three or four spaces available on the street. Ms. Carballo also noted that the dental office across Maryland Avenue has indicated that the hair salon could

use their lot in the evenings. There was no testimony from the public.

Planner Seiden voiced staff's recommendation for approval with conditions as specified in the staff-prepared approval resolution for the Board of Appeals.

Motion was made by Victor Macdonald, seconded by Gene Wasserman, to APPROVE Special Exception BOA-3288-2013 – Olga Carballo and Vilma Gonzalez, dba Willow Hair Studio, 2 Maryland Avenue, finding it in compliance with §§ 24-22(c) and 24-189(b), with the following conditions:

1. This special exception is granted for Willow Hair Studio only and shall terminate at the time of the expiration of their lease and/or any subsequent lease renewals;
2. Operating hours are limited to the hours specified in the Findings and Conclusions of the Resolution; and
3. Salon Services are permitted on the first floor only.

Vote: 4-0

B. BOA-3280-2013 – Linda Stein for Zosimos Botanicals, LLC

The application requests a Special Exception to permit a home based business, material impact, at 28 Allenhurst Court, Gaithersburg, Maryland. The property is located in the R-90 Cluster Zone. The special exception is allowed by §24-216 of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the review of the Board of Appeals.

Planner Seiden introduced the application, located the property and introduced the applicant.

Business owner and applicant Linda Stein, discussed the nature of her business, noting it has been in operation for nine years in the basement of her existing home. She stated that the business is predominantly an e-business and that customers rarely visit the home. The business employs one person full-time and employs others part time throughout the year. She requested that an additional condition be added to the special exception to permit an additional vehicle to park curb side until 6:00 pm. In response to Board Member Chiswell, Ms. Stein noted that multiple neighbors signed a petition in support of the special exception.

Julien Labiche, Liberty's Promise, spoke in favor of the application, noting that the non profit organization places interns at Zosimos Botanicals and that the company has been a great partner with Liberty's Promise.

In response to Board Member Wasserman's question regarding part time work schedules, Ms. Andrea Levy, part-time employee, spoke in favor of the application, noting that she does not work more than 10 hours per week, typically one to four hours at a time.

Planner Seiden introduced the application, located the property and introduced the applicant. Business owner and applicant Linda Stein, discussed the nature of her business, noting it has been in operation for nine years in the basement of her existing home. She stated that the business is predominantly an e-business and that customers rarely visit the home. The business employs one person full-time and employs others part

time throughout the year. She requested that an additional condition be added to the special exception to permit an additional vehicle to park curb side until 6:00 pm. In response to Board Member Chiswell, Ms. Stein noted that multiple neighbors signed a petition in support of the special exception.

Julien Labiche, Liberty's Promise, spoke in favor of the application, noting that the non profit organization places interns at Zosimos Botanicals and that the company has been a great partner with Liberty's Promise.

In response to Board Member Wasserman's question regarding part time work schedules, Ms. Andrea Levy, part-time employee, spoke in favor of the application, noting that she does not work more than 10 hours per week, typically one to four hours at a time.

Motion was made by Robert Chiswell, seconded by Joseph Coratola Jr., to APPROVE Board of Appeals APPROVAL of Special Exception BOA-3280-2013 - Zosimos Botanicals, 28 Allenhurst Court, finding it in compliance with Zoning Ordinance §§ 24-218(c) and 24-189(b), with the following conditions:

1. This special exception is granted for Zosimos Botanicals, LLC, only and shall not be transferable to any other business located at 28 Allenhurst Court;
2. Operating hours for non-resident employees are restricted to weekdays from 9:00 am to 6:00 pm;
3. A maximum of four non-resident employees, volunteers, or interns may conduct business at 28 Allenhurst Court per day;
4. No more than 10 deliveries are permitted per week in addition to regular mail delivery;
5. Parking for non-resident employees may be permitted on street until 6:00 pm weekdays.

Vote: 4-0

IV. FROM STAFF

A. Adopted Ordinances

1. Two Ordinances recently adopted by City Council are included in the Board's package that are the result of the worksessions that the Board held last year

B. Draft Board of Appeals Rules of Procedure

2. The Draft Board of Appeals Rules of Procedure can now be adopted by the Board now that the text amendments have been approved.

Motion was made by Victor Macdonald, seconded by Gene Wasserman, to ADOPT the Board of Appeals Rules of Procedure to become effective September 24, 2013.

Vote: 4-0

V. ADJOURNMENT

There being no further business to come before this session, the meeting was duly adjourned at 8:08 p.m.

Respectfully submitted,

Caroline Seiden

DRAFT

INDEX OF MEMORANDA
BOA-3237-2013

<u>Exhibit</u>	<u>Description</u>
1)	Application for Special Exception
2)	Statement of Applicant
3)	Site Photographs
4)	Site Plan, Sheet C-1
5)	Site Details, Sheet C-2
6)	Antenna Specifications
7)	Existing Coverage Map Without Site
8)	Coverage Map With Site Only
9)	Coverage Map with Site and Neighbors
10)	Authorization Letter from Verizon Wireless, August 27, 2013
11)	Authorization Letter from SBA, July 2, 2013
12)	Letter to Izaak Walton League from Victoria Todd, SBA Towers IV, LLC, May 23, 2013
13)	Letter to Brian Stover, Verizon Wireless, from M.G. Diamond, June 25, 2013
14)	List of Adjacent Property Owners
15)	Lease Agreement Between SBA Towers IV, LLC and CELLCO Partnership (dba Verizon Wireless)
16)	Certified City of Gaithersburg Zoning Map
17)	Approved Sketch Plan Z-317 and Schematic Development Plan SDP-12-001
18)	Final Resolution A-527(B)
19)	Draft Resolution of Approval BOA-3237-2013

BOA-3237-2013
8/7/13

P&CA

PLANNING AND CODE ADMINISTRATION

City of Gaithersburg · 31 South Summit Avenue · Gaithersburg, Maryland 20877 · Telephone: (301) 258-6330 · Fax: (301) 258-6336
plancode@gaithersburgmd.gov · www.gaithersburgmd.gov

BOARD OF APPEALS

SPECIAL EXCEPTION APPLICATION

In accordance with Chapter 24, Article VII, Sections 24-187 through 24-192 of the City Code

PROJECT NAME Verizon Wireless - "Halcyon"
PROJECT ADDRESS 707 Conservation Lane
LOCATION DESCRIPTION (if no address) _____

PETITIONER Verizon Wireless, % Network Building and Consulting, LLC
BUSINESS NAME (if applicable) _____
PRIMARY CONTACT Harold Bernadzikowski
PETITIONER ADDRESS 7380 Coca Cola Dr., Suite 106, Hanover, MD 21076
TELEPHONE 410-712-7092 **E-MAIL ADDRESS** hbernadzikowski@nbcllc.com

SPECIAL EXCEPTION TYPE

☐ New Special Exception ☒ Special Exception Amendment ☐ Radio or Television Station

REQUESTED USE:

- | | |
|---|--|
| <input type="checkbox"/> Alcoholic Beverage Manufacturing | <input type="checkbox"/> Laboratories |
| <input type="checkbox"/> Amusement Center | <input type="checkbox"/> Off Street or Off Site Parking Lots & Garages |
| <input type="checkbox"/> Assembling/Manufacturing | <input type="checkbox"/> Pawn Shops |
| <input type="checkbox"/> Bed and Breakfast | <input type="checkbox"/> Private Educational Institutions |
| <input type="checkbox"/> Child/Elderly Daycare with less than 8 people | <input type="checkbox"/> Public Utilities |
| <input type="checkbox"/> Child/Elderly Daycare with more than 8 people | <input type="checkbox"/> Tattoo/Body Piercing Parlor |
| <input type="checkbox"/> Commercial Parks/Outdoor Amusements/Golf Courses | <input type="checkbox"/> Telecomm Facility - Requires new pole/tower |
| <input type="checkbox"/> Group Residential Facilities | <input checked="" type="checkbox"/> All Other Telecommunication Facilities |
| <input type="checkbox"/> Hospital/Veterinary Hospital | <input type="checkbox"/> Other (please specify) _____ |

NATURE OF APPLICATION

Briefly describe application request referencing appropriate section of City Code.

Request S.E. approval for telecommunication facility, to be collocated on an existing monopole, in the R-A Zone, in accordance with Sections 24-25(11) and 24-167A of the Zoning Ordinances.

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

BOA # A-257(C)

continued on reverse side

THE CHECKLIST BELOW IS A GENERAL GUIDE FOR ITEMS THAT ARE TYPICALLY REQUIRED FOR APPLICATIONS. PLEASE REFER TO CHAPTER 24, ARTICLE VII, SECTION 24-188 (c) (1) OF THE CITY CODE FOR COMPLETE REQUIREMENTS OR CONTACT A BOARD OF APPEALS STAFF MEMBER AT 301-258-6330 FOR FURTHER CLARIFICATION

SUBMITTAL REQUIREMENTS

- ☒ 1. Petitioner Statement per Section 24-188 (c)(1) b and g.
- ☒ 2. Plans and Drawings per Section 24-169(c), One (1) hard copy, One (1) digital copy (DWF preferred) or PDF
- ☒ 3. List of Abutting and Confronting Property Owners
- ☒ 4. Zoning Map
- ☐ 5. List of Additional Parties to be Notified

Optional Submittals

- ☒ 1. Lease/Authorization Letter (required if not owner)
- ☐ 2. Master Plan Maps
- ☒ 3. Additional Petitioner Exhibits

SPECIAL EXCEPTION APPLICATION - DESCRIPTION & JUSTIFICATION STATEMENT
Verizon Wireless – “Halcyon”
707 Conservation Lane, Gaithersburg, MD 20878

Project Description:

Verizon Wireless is proposing to collocate twelve (12) panel antennas on the existing monopole, at a rad center height of 97'. A 12' x 16' equipment shelter would be placed on the ground, near the base of the monopole, within the existing fenced-in compound. A separate generator, approximately 4' wide by 8' tall, would be placed on a concrete pad next to the shelter. The generator is for back-up power for the facility during power outages. The facility is needed in order to provide service coverage for Verizon Wireless customers in this area.

Sec. 24-189.(b) Findings required.

A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

- (1) Is a permissible special exception within the zone and that the application complies with all procedural requirements set forth in this article;

Telecommunication facilities are a permissible Special Exception use in the MXD (Mixed Use) zone, in accordance with Section 24-160.D of the Gaithersburg Zoning Code.

- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located;

The proposed telecommunication facility, which is to collocate antennas on an existing monopole, complies with all of the specific telecommunication design requirements contained in Section 24-167A, as outlined below.

- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

The proposed Verizon antennas will be located on the existing monopole, and the Verizon equipment shelter and generator will be located within the existing fenced-in compound. As such, they will be detrimental in any manner to the surrounding properties or the general neighborhood. The generator will exercise about once per week, for about ½ an hour, typically between 8:00 – 11:00 a.m.; and will not conflict with any applicable noise ordinances, and will not be objectionable to any surrounding properties. The facility will be checked about once a month for routine maintenance purposes, by a Verizon employee.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

The antennas are to be placed on the existing monopole; therefore, they will be in harmony with the general character of the neighborhood. The proposed collocation will not generate any daily traffic or any significant activity on site that would be in conflict with the general character of the neighborhood.

- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

The proposed collocation of Verizon's equipment on the existing monopole is consistent with the Master Plan for this general area, as well as the Zoning Code, which encourages collocations instead of proposals for new towers.

- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

Verizon Wireless is a licensed telecommunication provider and operates all of its facilities within the laws and requirements of the FCC, including health considerations for radio frequency emissions. The proposed antennas and equipment shelter will not adversely affect the health, safety, security, morals, or general welfare of the residents of the neighborhood, or visitors or workers in the area.

- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

The proposed telecommunication use does not require water or sewer service, or other public improvements or utilities. As a small, unoccupied space, it will not overburden police or fire protection services.

- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

The subject property is located in the MXD zone. The proposed equipment shelter building will have a washed stoned exterior, and will be inside the existing compound, which is surrounded by significant forested area and; therefore, will not have a negative visual impact on any adjoining properties.

Section 24-167A – Design Criteria for Telecommunication Facilities:

- (D).(2) Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:

- (1) The application complies with all of the standards contained in [section 24-167A\(C\)\(1\)](#): The proposed structure will not endanger the health and safety of residents, employees or travelers, including, but not limited to, the likelihood of the failure of such structures.

The proposed antennas and equipment shelter will in no way endanger the health or safety of resident, visitors, or travelers in this area. All Verizon equipment is operated in compliance with FCC regulations for health and safety. A structural analysis has been performed, and will be submitted with the building permit application, indicating

that the monopole is structurally capable of supporting the weight of the additional Verizon antennas and cables.

- (2) The location selected is necessary for the public convenience and service.

The location selected is an existing monopole and is a location that meets Verizon's objectives for providing cellular phone service in this area.

- (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.

This parcel is improved with a single monopole. There are no other monopoles or similar structures on this parcel, or in the area in general, that would create a concentration of such facilities.

- (4) The location selected for a monopole is more than three hundred (300) feet from either the nearest boundary of a historic district or more than three hundred (300) feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.

Not applicable – Verizon is proposing to collocate on an existing monopole.

- (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two (2) additional antennas and related equipment buildings or cabinets unless co-location is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.

Not applicable. The proposed project is not for a new monopole. Verizon is proposing to collocate on an existing monopole.

- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least thirty (30) feet in height in any multifamily residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.

Not applicable – this is not a rooftop facility.

- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the board of appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multifamily residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.

Not applicable – this is not a building collocation.

- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed five hundred sixty (560) square feet and twelve (12) feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three (3) feet. The board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

The subject property is not residentially zoned. However, the proposed equipment shelter is less than 560 square feet in size and does not exceed 12' in height. It will have a washed stone exterior. There are no other dwellings or structures on the subject, near to the existing monopole or compound. The compound is surrounded by a significant amount of forested/vegetated areas, on all sides.

- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.

The proposed Verizon equipment shelter is to be located within the existing compound and complies with all setbacks for such structures in the MXD zone.

- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional ten (10) percent. The board must also find that the structure is not visually intrusive.

Not applicable.

- (11) The board must also find that a free-standing monopole or other support structure is proposed to hold no less than three (3) telecommunications carriers. The board may approve a monopole or other support structure with fewer than three (3) telecommunications carriers if the applicant establishes that: (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna; or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

Not applicable. Verizon is not proposing to construct a new monopole.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).

Verizon is not proposing to construct a new monopole. The existing monopole was approved under previous Special Exception applications and amendments.

- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.

Not applicable. Verizon is proposing to construct a new monopole.

- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.

Not applicable.

- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building setback for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

Not applicable.

- (c) Location requirements for structures. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.

Not applicable.

- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half ($\frac{1}{2}$) foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

Not applicable.

- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.

Understood. Only FCC required safety signs will be placed on the fence or equipment shelter.

- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the federal communications commission, the federal aviation administration or the board.

Understood.

- (f) Removal of telecommunications facilities. Every free-standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

Verizon will comply with this section in the event that use of the facility ceases.



Google earth

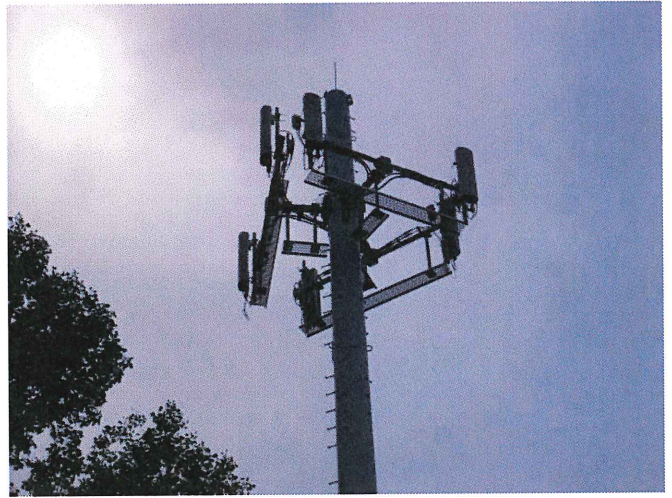
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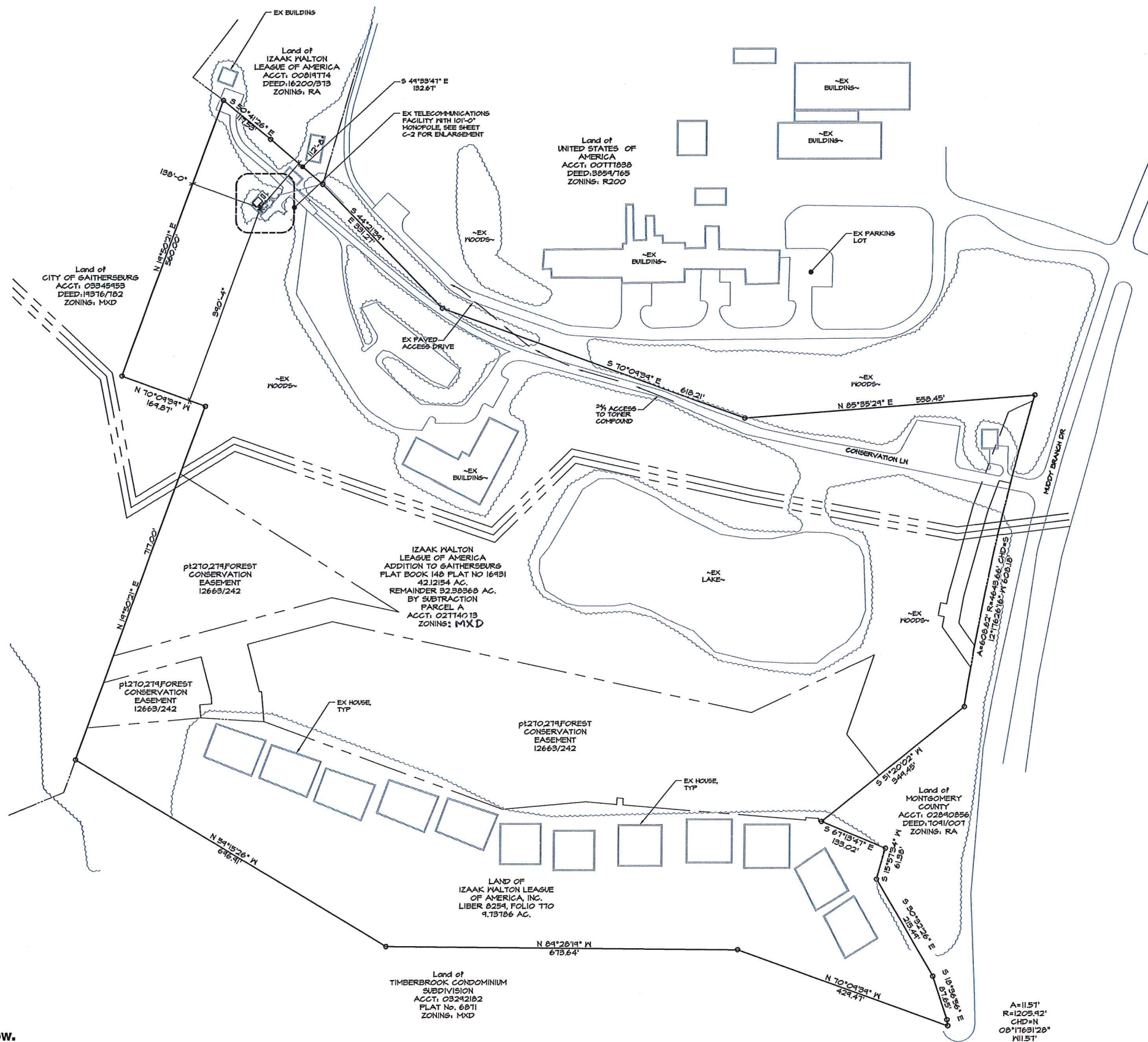


Ex. tower
and
compound.

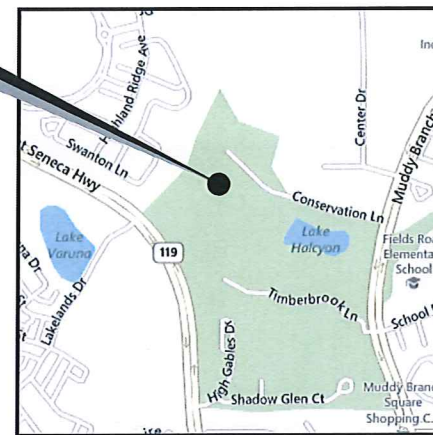
Photographs







SITE



SITE NOTES

1. APPLICANT: VERIZON WIRELESS, 4000 JUNCTION DRIVE, ANNAPOLIS, MARYLAND 20701, TEL: (800) 832-2000, FAX: (800) 832-2166.
2. APPLICANT'S ATTORNEY: M.S. DIAMOND, LAW OFFICES OF M. GREGG DIAMOND, P.C., 10000 ROCKHILL AVENUE, SUITE 402, BETHESDA, MARYLAND 20814-5914, (240) 546-5914.
3. PROPERTY OWNER: IZAAK MALTON LEAGUE OF AMERICA, 101 CONSERVATION LANE, GAITHERSBURG, MARYLAND 20878.
4. SITE DATA: MAP: F533, PARCEL: N05, DEED: BOOK 2254, PAGE 110, PARCEL ID: 02114073, TRACT AREA: 92.34 ACRES, DISTRICT: 01, ADDRESS: 101 CONSERVATION LANE, GAITHERSBURG, MARYLAND 20878, EXISTING USE: COMMERCIAL, TELECOMMUNICATIONS.
5. ZONING: MXD.
6. HORIZONTAL AND VERTICAL CONTROL SHOWN HEREON IS BASED ON A GPS LATITUDE BY MORRIS & RITCHIE ASSOCIATES, INC. DATED MAY 2013. LATITUDE: N84° 07' 18.4\"/>
7. TOTAL DISTURBED AREA = 240 SF.
8. THE PROPOSED FACILITIES WILL CONSIST OF ONE (1) 16' LONG x 11'-1\"/>
9. THE APPLICANT WILL PROVIDE A CERTIFICATION FROM A REGISTERED ENGINEER THAT THE STRUCTURE WILL MEET THE APPLICABLE DESIGN STANDARDS FOR WIND LOADS PER THE REQUIREMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION.
10. THE MONOPOLE AND EQUIPMENT COMPACT FACILITY HERE APPROVED UNDER PRIOR SPECIAL EXCEPTION APPLICATIONS A-521 (2/8/2007), A-521A (2/14/2008), A-521B (2/22/2009), AND A-521C (4/4/2010) AND SUBJECT TO THE CONDITIONS OF APPROVAL ENUNCIATED IN THE BOARD OF APPEALS RESOLUTIONS.
11. IF THE ANTENNAS ARE NO LONGER USED FOR TELECOMMUNICATIONS PURPOSES FOR A CONTINUOUS PERIOD OF ONE (1) YEAR, THEY SHALL BE REMOVED BY THE ANTENNA OWNER AT OWNER'S EXPENSE.
12. NO WATER OR SANITARY UTILITIES ARE REQUIRED FOR THE OPERATION OF THIS FACILITY.
13. STORMWATER MANAGEMENT NOTE: NO STORMWATER MANAGEMENT IS REQUIRED FOR THIS SITE.
14. THE EXTERIOR OF THE SHELTER SHALL BE A MASHED STONE FINISH.
15. BOUNDARY SHOWN PER COUNTY RECORDS. EXISTING SITE FEATURES SHOWN PER SURVEY BY MORRIS & RITCHIE ASSOCIATES, INC. DATED MAY 2013.
16. THIS PLAN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT. PLAN IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
17. ALL DETAILS SHOWN ARE "STANDARD" OR "TYPICAL" FOR REFERENCE ONLY. FOR ACTUAL DETAILS, SEE ARCHITECTURAL, STRUCTURAL, OR CONSTRUCTION PLANS BY OTHERS.
18. STRUCTURAL ANALYSIS/DESIGN TO BE PERFORMED BY OTHERS AT CLIENT AND/OR OWNER'S DISCRETION PRIOR TO CONSTRUCTION OF ANY WORK.
19. THE COMMUNICATION SHELTER SHALL BE UNMANNED, WITH INFREQUENT VISITS (FOUR OR FEWER PER YEAR) BY MAINTENANCE PERSONNEL, AND WITH ACCESS AND PARKING FOR NO MORE THAN ONE VEHICLE. THE PROPOSED FACILITY IS NOT FOR HUMAN HABITATION AND THEREFORE HANDICAP ACCESS IS NOT REQUIRED.
20. THE PROPOSED COMMUNICATIONS SHELTER, ANTENNAS AND RELATED MOUNTING DEVICES DO NOT EXCEED TWELVE (12) FEET IN TOTAL HEIGHT.
21. THE MONOPOLE AND EQUIPMENT COMPACT FACILITY HERE APPROVED UNDER PRIOR SPECIAL EXCEPTION APPLICATIONS A-521 (2/8/2007), A-521A (2/14/2008), A-521B (2/22/2009), AND A-521C (4/4/2010) AND SUBJECT TO THE CONDITIONS OF APPROVAL ENUNCIATED IN THE BOARD OF APPEALS RESOLUTIONS.

GENERAL NOTES

1. CONTRACTOR SHALL NOTIFY "811" (800) 48 HOURS PRIOR TO DOING ANY EXCAVATION IN THIS AREA. CONTRACTOR SHALL CONTACT A SUBSURFACE UTILITY LOCATOR FOR LOCATION OF EXISTING UTILITIES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITIES. CONTRACTOR SHALL VERIFY EXISTING UTILITY LOCATIONS BY TEST PIT AS NECESSARY. LOCATION OF UTILITIES SHOWN ON THIS PLAN ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREE TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES. DAMAGE TO UTILITIES OR PROPERTY OF OTHER BY THE CONTRACTOR DURING CONSTRUCTION SHALL BE REPAIRED TO PRECONSTRUCTION CONDITIONS BY THE CONTRACTOR.
2. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH ALL STATE AND LOCAL CODES AND ORDINANCES, THE LATEST EDITION THEREOF.
3. ANY PERMITS WHICH MUST BE OBTAINED SHALL BE THE CONTRACTOR'S RESPONSIBILITY. CONTRACTOR SHALL SECURE ALL NECESSARY PERMITS FOR THIS PROJECT FROM ALL APPLICABLE GOVERNMENTAL AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ABIDING BY ALL CONDITIONS AND REQUIREMENTS OF THE PERMITS.
4. CONTRACTOR SHALL COORDINATE ALL UTILITY CONNECTIONS WITH APPROPRIATE UTILITY OWNERS.
5. THESE PLANS ARE NOT FOR RECORDATION OR CONVEYANCE.
6. EXISTING PAVED DRIVE AND OTHER SURFACES DISTURBED BY CONTRACTOR (WHICH ARE NOT TO BE REMOVED) SHALL BE REPAIRED TO PRECONSTRUCTION CONDITIONS BY THE CONTRACTOR.

MONTGOMERY COUNTY NOTES

PER SECTION 2-6-6.2

- A) A PRIVATE TELECOMMUNICATIONS ANTENNA MAY BE ATTACHED AS A MATTER OF RIGHT TO AN EXISTING STRUCTURE OWNED OR OPERATED BY A COUNTY, BI-COUNTY, STATE OR FEDERAL AGENCY.
- B) ANY LAND OR STRUCTURE OWNED BY AN INDEPENDENT FIRE DEPARTMENT OR RESCUE SQUAD APPROVED UNDER CHAPTER 21 IS NOT OWNED OR CONTROLLED BY A COUNTY AGENCY FOR PURPOSES OF THIS SECTION AND REQUIRES A SPECIAL EXCEPTION. ANY TELECOMMUNICATION FACILITY CONSTRUCTED AS OF NOVEMBER 21, 1998 ON ANY LAND OR STRUCTURE OWNED BY AN INDEPENDENT FIRE DEPARTMENT OR RESCUE SQUAD IS NOT A NONCONFORMING USE.
- C) AN UNMANNED EQUIPMENT BUILDING OR CABINET ASSOCIATED WITH A TELECOMMUNICATION FACILITY LOCATED ON PUBLICLY OWNED LAND OR ATTACHED TO A PUBLICLY OWNED STRUCTURE MUST NOT EXCEED 800 SQUARE FEET AND 12 FEET IN HEIGHT, EXCEPT A SINGLE EQUIPMENT BUILDING IN EXCESS OF 800 SQUARE FEET MAY BE USED FOR MORE THAN ONE TELECOMMUNICATION PROVIDER, IF:
 - i) THE OVERALL SQUARE FOOTAGE DOES NOT EXCEED 800 SQUARE FEET AND 12 FEET IN HEIGHT.
 - ii) THE BUILDING IS USED FOR MORE THAN ONE TELECOMMUNICATION PROVIDER OPERATING FROM THE SAME MONOPOLE OR TOWER, AND
 - iii) THE BUILDING IS REVIEWED BY THE TELECOMMUNICATIONS TRANSMISSION FACILITY COORDINATING GROUP IN ACCORDANCE WITH SEC. 2-6-6 OF THE COUNTY CODE.
- D) IF THE NEAREST ADJOINING PROPERTY IS CLASSIFIED IN A RESIDENTIAL ZONE, THE EQUIPMENT BUILDING OR CABINET MUST BE FACED WITH BRICK OR OTHER SUITABLE MATERIAL ON ALL SIDES AND LANDSCAPED TO A HEIGHT OF AT LEAST 8 FEET.
- E) ANY PRIVATE TELECOMMUNICATION FACILITY ON PUBLICLY OWNED LAND THAT IS NOT PERMITTED UNDER SUBSECTIONS A), B) OR C) MUST OBTAIN A SPECIAL EXCEPTION FROM THE BOARD OF APPEALS.

MRA
MORRIS & RITCHIE ASSOCIATES, INC.
Civil / Structural Engineers
1280-O East Joppa Road, Suite 505
Towson, Maryland 21204
410-831-1800
410-831-1149 Fax



PROFESSIONAL CERTIFICATION

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 23803. EXPIRATION DATE: 07/04/2018.

verizon wireless
HALCYON
101 CONSERVATION LANE
GAITHERSBURG, MARYLAND 20878 (MONTGOMERY CO.)

REVISIONS:

NO.	DESCRIPTION	DATE
1	ZONING DRAWINGS	08/02/13

DESIGNED BY: JEN

PROJECT NO: 10427.1150

DATE: 7/23/2013

SCALE: AS NOTED

TITLE:

Site Plan

SHEET:

C-1



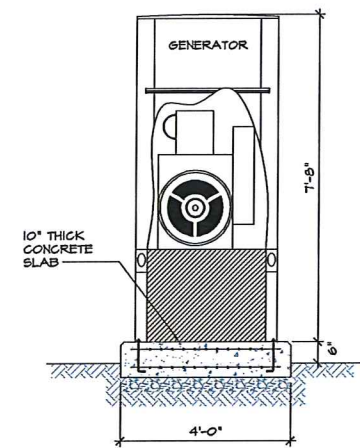
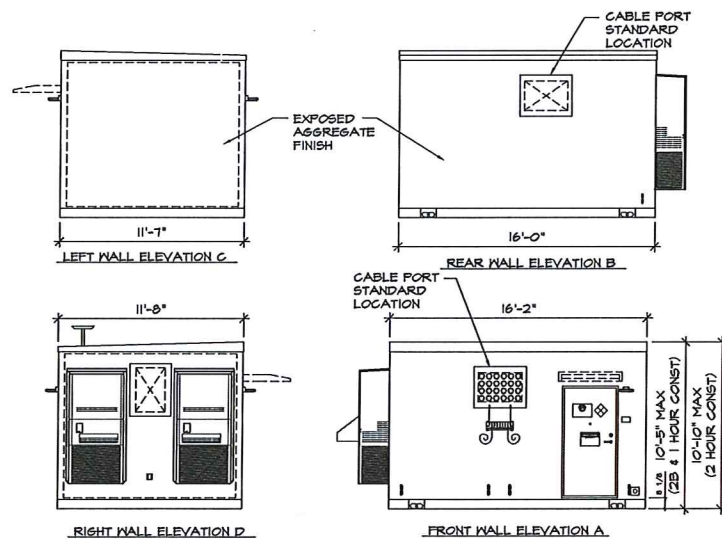
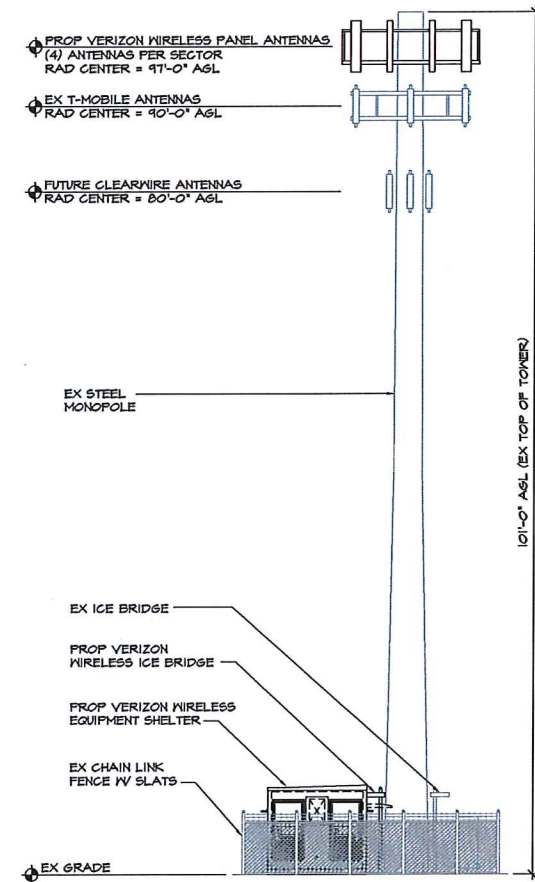
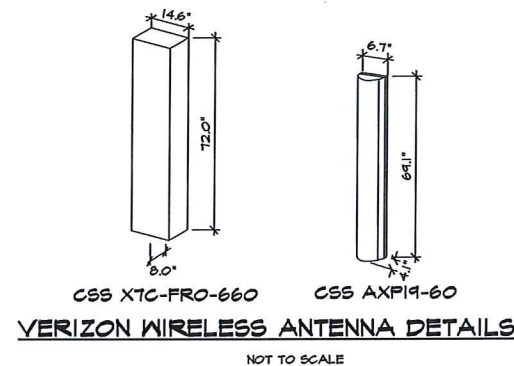
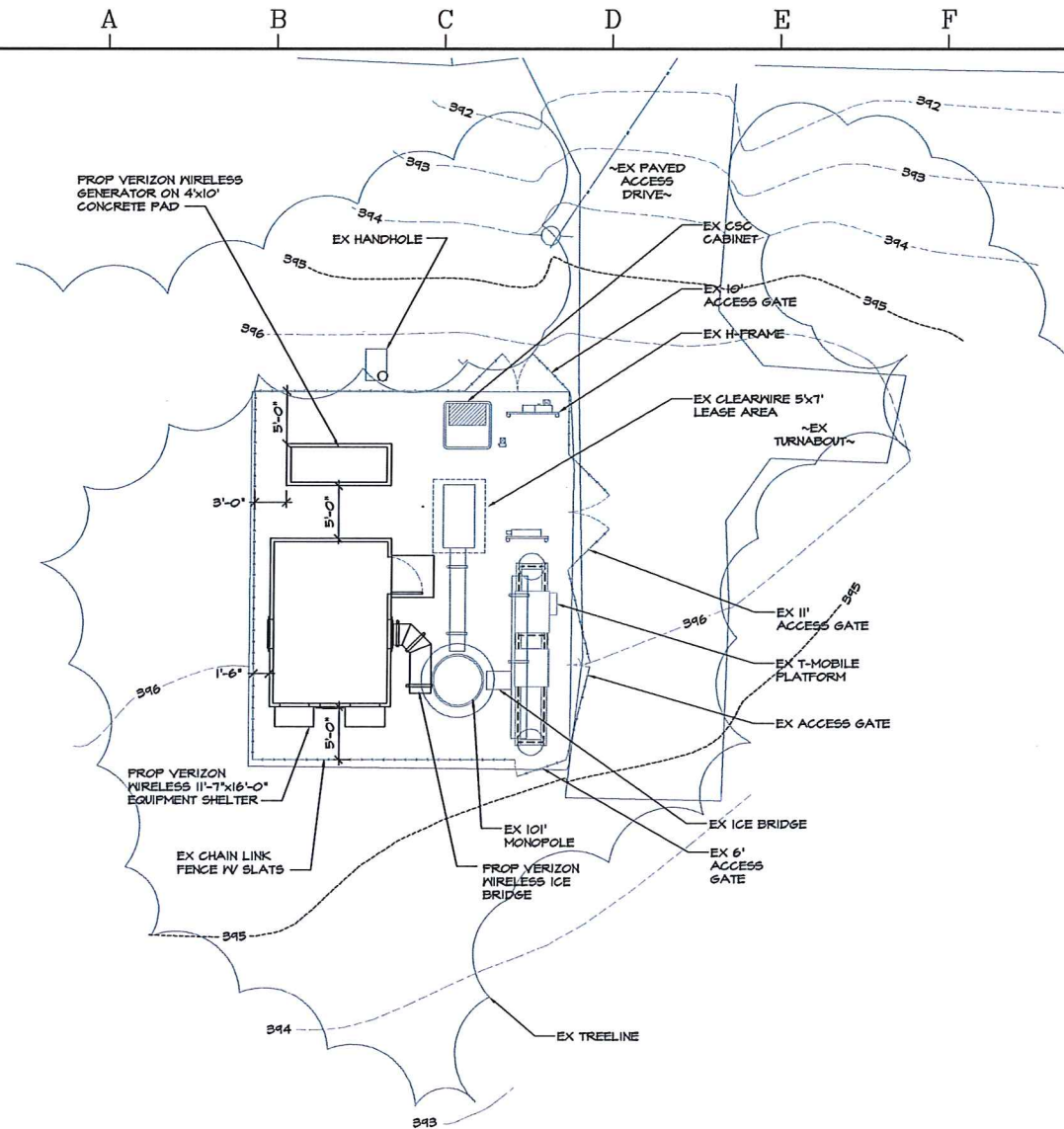
Know what's below.
Call before you dig.

PROTECT YOURSELF, GIVE THREE
WEEKS NOTICE
THIS DRAWING DOES NOT INCLUDE NECESSARY
COMPONENTS FOR CONSTRUCTION SAFETY. ALL
CONSTRUCTION MUST BE DONE IN COMPLIANCE
WITH THE OCCUPATIONAL SAFETY AND HEALTH
ACT OF 1970 AND ALL RULES AND REGULATIONS
THERE TO APPURTAINMENT.

SITE PLAN
SCALE: 1" = 100'



Board of Appeals
BOA-3237-2013
Exhibit #4



MRA
MORRIS & RITCHIE
ASSOCIATES, INC.
Civil / Structural Engineers
1250-C East Joppa Road, Suite 605
Towson, Maryland 21204
410-831-1800
410-831-1748 Fax



PROFESSIONAL CERTIFICATION
I HEREBY CERTIFY THAT THESE
DOCUMENTS WERE PREPARED
OR APPROVED BY ME AND
THAT I AM A DULY LICENSED
PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE
OF MARYLAND, LICENSE NO.
ST124, EXPIRATION DATE:
07/04/2018.

verizon wireless
HALCYON
707 CONSERVATION LANE
GAITHERSBURG, MARYLAND 20878 (MONTGOMERY CO.)

REVISIONS:

NO.	DESCRIPTION	DATE
1	ZONING DRAWINGS	08/02/13

DESIGNED BY: JEN
PROJECT NO: 10427.1150
DATE: 1/23/2013
SCALE: AS NOTED
TITLE:

Site
Details

SHEET:

C-2

Board of Appeals
BOA-3237-2013
Exhibit #5

811
Know what's below.
Call before you dig.
PROTECT YOURSELF, GIVE THREE
WORKING DAYS NOTICE.
THIS DRAWING DOES NOT INCLUDE NECESSARY
COMPONENTS FOR CONSTRUCTION SAFETY. ALL
CONSTRUCTION MUST BE DONE IN COMPLIANCE
WITH THE OCCUPATIONAL SAFETY AND HEALTH
ACT OF 1970 AND ALL RULES AND REGULATIONS
THERE TO APPURTINANT.



X7C-FRO-660

Xpol, 58° H-Beam

698-896 MHz

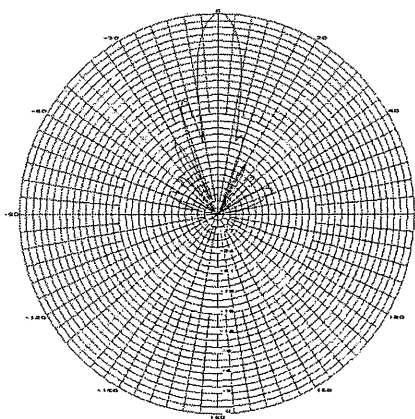
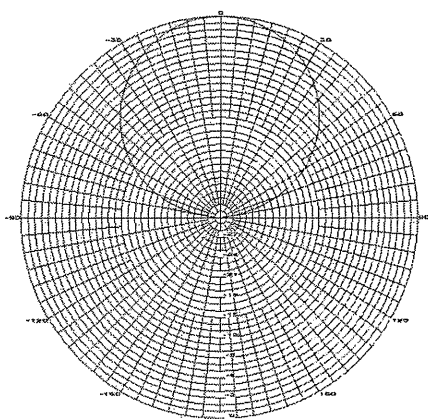
Electrical Specifications

Frequency	698-896 MHz
Polarization	Slant +/- 45
Gain @ 698 MHz	16.1 dBi
Gain @ 782 MHz	16.6 dBi
Gain @ 896 MHz	17.2 dBi
Horizontal Beam (3dB Points)	58°
Vertical Beam (3dB Points)	11°
Elect. Downtilt Range, 2° Increments	0-10°
VSWR / Return Loss	≤1.35:1 / 16.5 dB
VSWR w/i	<1.50:1 / 14.0 dB
Front-to-Back at Horizon	>30 dB
Upper Side Lobe Suppression	<-18 dB
Impedance	50 Ohms
Power Input Per Connector	500 CW at 800 MHz
Isolation	< -27 dB
Intermodulation (2x20W)	<-150 dBc

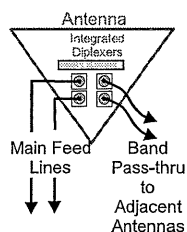
Mechanical Specifications

Input Connector (female)	Back 7/16 DIN or w/bot. opt.
Antenna Dimensions (LxWxD)	72.0 x 14.6 x 8.0 in. (1829 x 372 x 203mm)
*Antenna Weight	32.2 lbs
Bracket Weight	13.2 lbs
Lightning Protection	Direct Ground
RF Distribution	Printed Microstrip Substrate
Radome	Ultra High-Strength Luran
Weatherability	UV Stabilized, ASTM D1925
Radome Water Absorption	ASTM D570, 0.45%
Environmental	MIL-STD-810E
Wind Survival	150 mph
Front Wind Load @100mph	208 lbf
Equivalent Flat Plate @100mph	4.23 sq-ft. (c=2)
Mounting Brackets (919011)	Fits 3.5 Inch Max. O.D. Pipe
Mechanical Downtilt Range	0-12°
Clamps/Bolts	Galvanized Steel/Stainless Steel

[\(Link to Mechanical Drawing\)](#)



Available with
Integrated Diplexers to
reduce mainline cables
and eliminate separate
external devices



Recommended Connector Coupling Torque
7/16 DIN: 220-265 lbf-in (25-30 N-m)

Return Loss at pass-thru port
into 50Ω load ≥17.7 dB

Ordering Information & Options

X7C-FRO-660-x	"-x" is a placeholder for the built-in fixed electrical downtilt in degrees, set to 0, 2, 4, 6, 8 or 10
X7C-FRO-660-xi	to add the option for integrated diplexers, add "i" to model number
X7C-FRO-660-xi-bot	for bottom mounted connectors, add "-bot" (otherwise antenna comes standard with back mounted connectors)

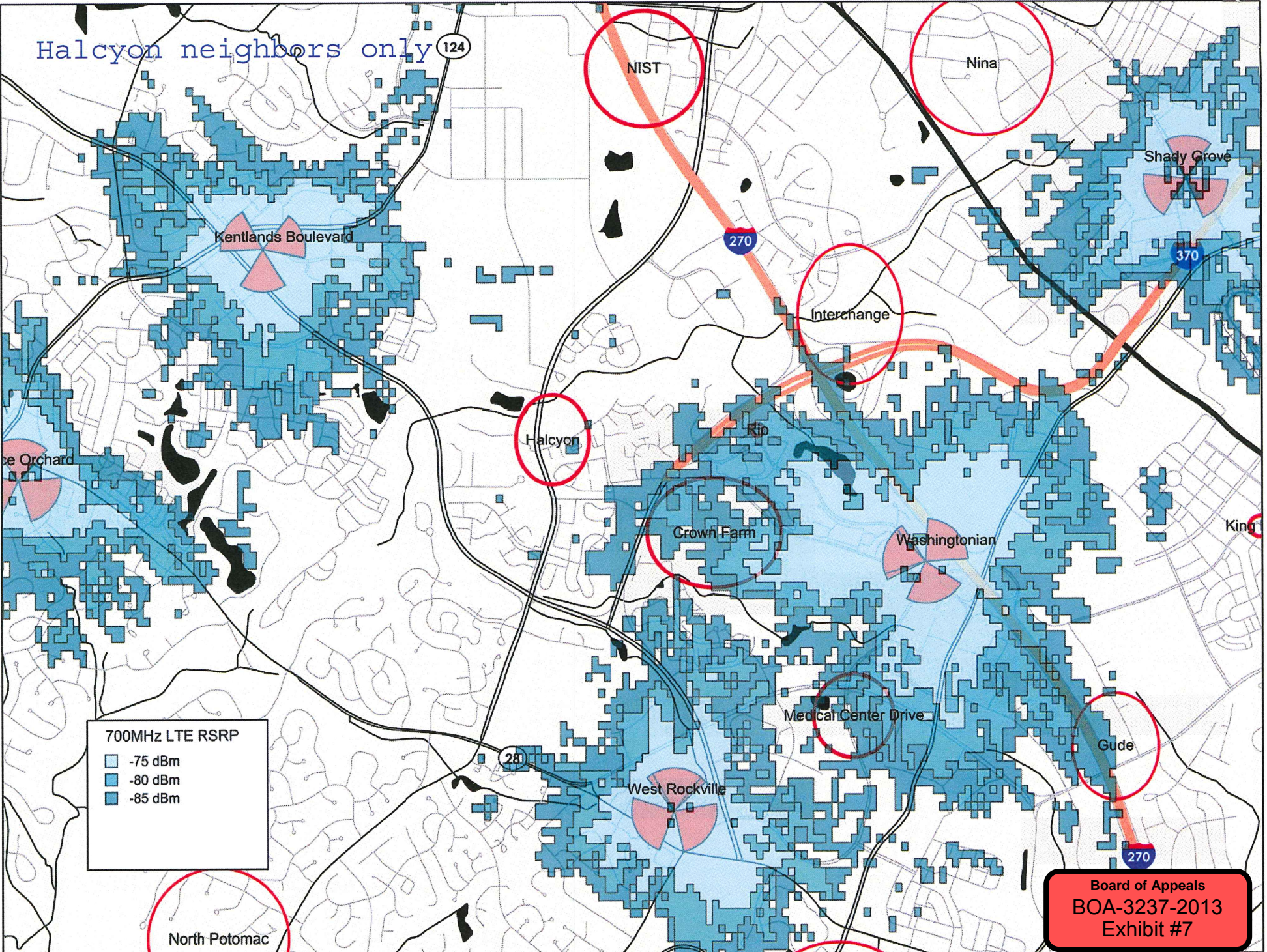
*Antenna Weight may vary slightly with options.

Halcyon neighbors only

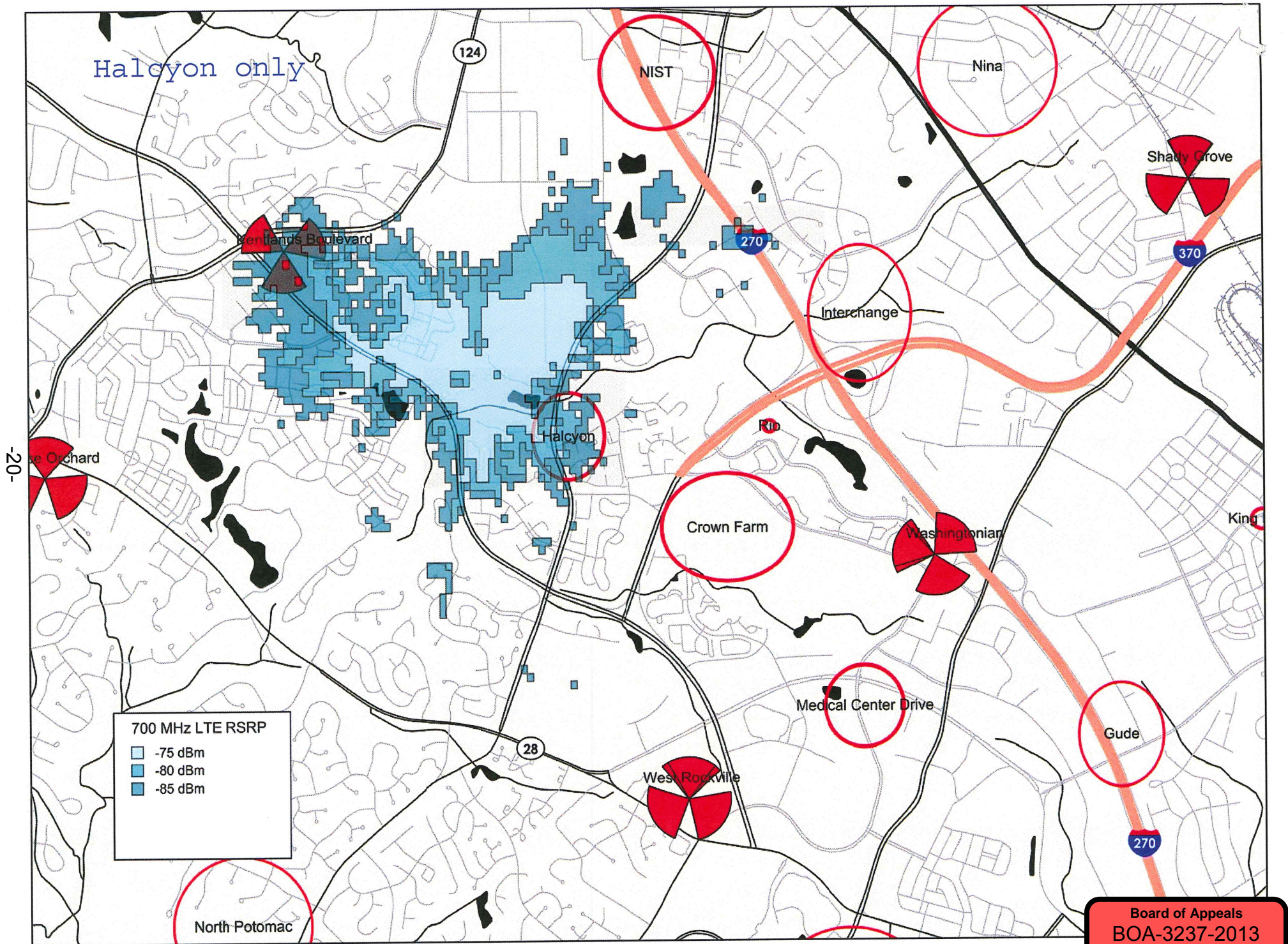
-19-

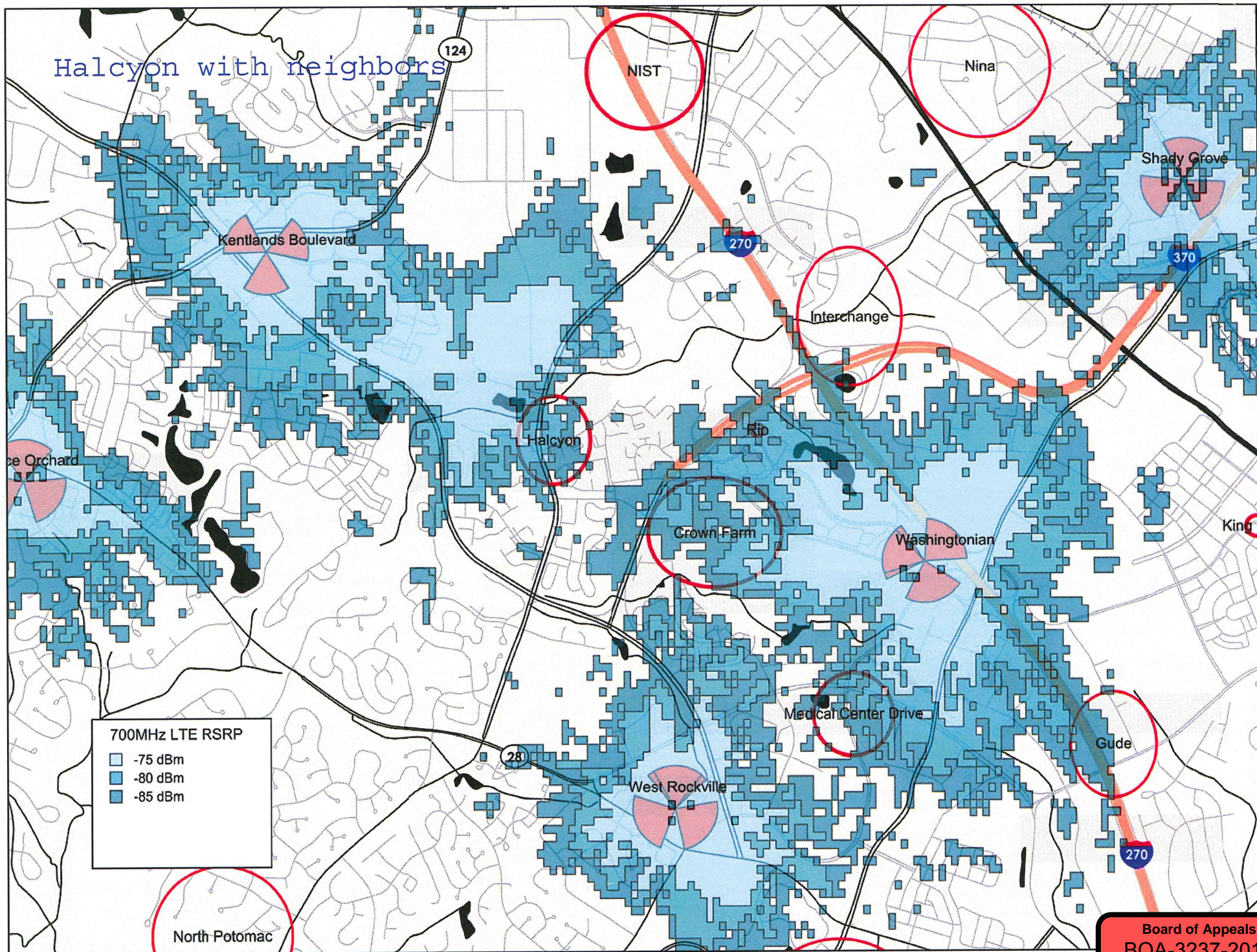
700MHz LTE RSRP

- 75 dBm
- 80 dBm
- 85 dBm



Board of Appeals
BOA-3237-2013
Exhibit #7







Verizon Wireless
9000 Junction Drive
Annapolis Junction, MD 20701
(301) 512-2000
(301) 512-2186 - FAX

August 27, 2013

City of Gaithersburg
Planning and Code Administration
31 S. Summit Avenue
Gaithersburg, MD 20877

RE: HALCYON site – 707 Conservation Lane
Verizon Authorization for NB&C

To Whom It May Concern,

Authorization is hereby granted to Network Building and Consulting, LLC, (NB&C), to act as Verizon Wireless' agents to apply for any and all zoning or permit applications required for the proposed collocation of antennas on the existing monopole at the referenced property. This authorization applies to any employees of NB&C or contractors working directly for NB&C.

Regards,

A handwritten signature in black ink, appearing to read "J. Golden", with a horizontal line extending to the right.

James Golden
Manager – Project Implementation



5900 Broken Sound Parkway NW
Boca Raton, FL 33487-2797

T + 561.995.7670
F + 561.995.7626

sbasite.com

Owner Authorization

SBA Site: MD46713-A-03 Suffield

City of Gaithersburg
Planning and Code Administration

e-MAILED
JUL 12 2013

RE: Verizon Wireless "Halcyon"
707 Conservation Lane
Gaithersburg, MD 20878

The undersigned property owner does hereby authorize Verizon Wireless, and/or their agents, to submit applications to the City of Gaithersburg, Planning and Code Administration, or any other applicable regulatory agency, for any and all necessary zoning and permitting approvals required by the City related to the telecommunications facility at the referenced property.

Jason Silberstein
Sr. VP, Property Management

Name: _____

Signature: _____

Address: 5900 Broken Sound Parkway NW
Boca Raton, FL 33487

Telephone: 561-995-7670

THE UNDERSIGNED PROPERTY OWNER DOES HEREBY AUTHORIZE VERIZON WIRELESS, AND/OR THEIR AGENTS, TO SUBMIT APPLICATIONS TO THE CITY OF GAITHERSBURG, PLANNING AND CODE ADMINISTRATION, OR ANY OTHER APPLICABLE REGULATORY AGENCY, FOR ANY AND ALL NECESSARY ZONING AND PERMITTING APPROVALS REQUIRED BY THE CITY RELATED TO THE TELECOMMUNICATIONS FACILITY AT THE REFERENCED PROPERTY.

Board of Appeals
BOA-3237-2013
Exhibit #11



5900 Broken Sound Parkway NW
Boca Raton, FL 33487-2797

T + 561.995.7670
F + 561.995.7626

sbsite.com

GROUND OWNER NOTICE TO SUBLEASE

Via OVERNIGHT MAIL

May 23, 2013

Izaak Walton League of America Inc.
707 Conservation Lane
Gaithersburg, MD 20878
301-548-0150

Re: SBA Site #/Name: MD4613-A-03 / Suffield
Site Address: 707 Conservation Lane, Gaithersburg, MD 20878

Dear Izaak Walton League of America Inc.:

Pursuant to our Ground Lease by assignment from TowerCo, SBA is proposing to sublicense tower and ground space within the Leased Premises to Verizon on the above referenced Tower.

Should you have any questions please contact Debbie Oshatz, the Account Executive for this site at (561) 226-9309.

Sincerely,

Victoria Todd
Administrative Assistant
SBA Towers IV, LLC

:vlt

Board of Appeals
BOA-3237-2013
Exhibit #12

From: (561) 226-9307 Origin ID: BCTA
 Victoria Todd
 SEA COMMUNICATIONS CORPORATION
 5900 Broken Sound Parkway NW

Boca Raton, FL 33487



J13111302120026

SHIP TO: (301) 548-0150

BILL SENDER

Izaak Walton League of America Inc

707 Conservation Lane

GAITHERSBURG, MD 20878

Ship Date: 23MAY13
 ActWgt: 1.0 LB
 CAD: 7206526/INET3370

Delivery Address Bar Code



Ref # 1001860007442
 Invoice #
 PO #
 Dept #

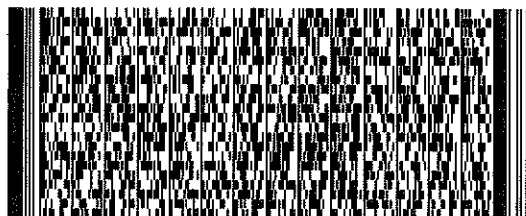
WED - 29 MAY AA
 EXPRESS SAVER

TRK# 7998 3628 1420

0201

SA EDGA

20878
 MD-US
 IAD



518G1A983A34B

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

LAW OFFICES OF M. GREGG DIAMOND, P.C.

ATTORNEYS AT LAW
SUITE 902
7500 WOODMONT AVENUE
BETHESDA, MARYLAND 20814-5379
Phone: (240) 398-2266
Fax: (240) 252-6238

M. GREGG DIAMOND
CATHY G. BORTEN
PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WRITER'S DIRECT DIAL NUMBER
(240) 398-2266
EMAIL: mgdlamohd@mgd-law.com

June 25, 2013

Mr. Brian A. Stover
Manager - Real Estate/Zoning
Verizon Wireless
9000 Junction Drive
Annapolis Junction, Maryland 20701

**RE: Halcyon
Antenna Site Agreement (with SBA)
Summary Letter**

Dear Brian:

Enclosed with this letter are two (2) originals of the proposed Antenna Site Agreement with SBA legal entity SBA Towers IV, LLC, for the Halcyon site located at 707 Conservation Lane, Gaithersburg, Montgomery County, Maryland. The footer of the SBA draft is dated June 25, 2013. All prior drafts and summary letters should be discarded. This letter will review the Site Agreement.

The Site Agreement has been prepared by SBA Towers using the HQ negotiated pro forma Antenna Site Agreement. The Agreement clearly identifies the subject property with an accurate metes and bounds legal description consistent with recorded legal descriptions of the Property found in the title report, as well as a detailed site sketch prepared by Verizon Wireless's site engineers showing the access to the SBA tower site on Exhibit A-1 page 1. The Verizon Wireless ground space is clearly identified on Exhibit A-1 page 2, identifying the equipment shelter and separate generator pad.

I have been advised by Shawn Sutton that the equipment listed in the Exhibit B Antenna and Equipment List is correct for this site. The Agreement will commence on the earlier of installation of Equipment or December 1, 2013. If installation is the trigger, there is a formula for starting the Agreement on the first day of the relevant month.

I have reviewed the Prime Lease at Exhibit E, which is consistent with the title report documents. The original Prime Lease is a Nextel Lease Agreement. Pursuant to paragraph 15 of the Prime Lease, Prime Tenant may freely sublet or license the Premises merely by giving notice to Prime Landlord. The Prime Lease was assigned to TowerCo LLC, and thereafter through a series of corporate transfers and a merger, the surviving legal entity with control of the Prime

Mr. Brian A. Stover

June 25, 2013

Page 2

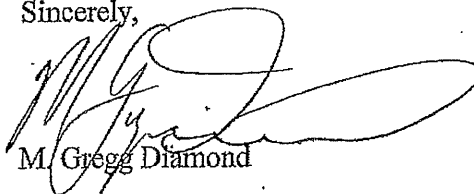
Lease is SBA Towers IV, LLC. Verizon Wireless appears to be doing business with the proper SBA legal entity at the site.

Consistent with the SBA pro forma, the Agreement has an initial 5-year term and four automatic 5-year extension terms. Rent commences [REDACTED], and increases three percent [REDACTED] per year.

Although the standard Agreement includes a sample form of recording memorandum, this execution package will not include a recordable memorandum for execution. As this site is in Maryland, we will not be recording.

In sum I believe that the Supplement with SBA has been prepared in a proper format, consistent with the pro forma, and the Agreement is ready for execution by Verizon Wireless. If you have any questions about the Agreement, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gregg Diamond", with a large, stylized flourish extending to the right.

M. Gregg Diamond

Enclosure

cc: Shawn Sutton

Owner
772 Clifftop Drive
Gaithersburg, MD 20878

Montgomery County
101 Monroe Street
Rockville, MD 20850

Owner
770 Clifftop Drive
Gaithersburg, MD 20878

Lakelands Ridge HOA
8120 Woodmont Avenue, Ste 300
Bethesda, MD 20814

Owner
768 Clifftop Drive
Gaithersburg, MD 20878

Izaak Walton League of America,
Inc.
707 Conservation Lane
Gaithersburg, MD 20878

Owner
766 Clifftop Drive
Gaithersburg, MD 20878

United States of America
c/o NIST Bldg 101 A825-A/P
601 Quince Orchard Road
Gaithersburg, MD 20878

Owner
764 Clifftop Drive
Gaithersburg, MD 20878

Timberbrook Condo Assoc.
c/o Commsource Mgmt., Inc.
3414 Morningwood Drive
Olney, MD 20832

Owner
762 Clifftop Drive
Gaithersburg, MD 20878

Owner/Occupant
700 Conservation Lane
Gaithersburg, MD 20878

Owner
760 Clifftop Drive
Gaithersburg, MD 20878

Owner/Occupant
704 Conservation Lane
Gaithersburg, MD 20878

Vanguard Mgmt Association
Park Summit HOA
P.O. Box 39
Germantown, MD 20875

Verizon Wireless
c/o Network Bldg and Consulting
Harold Bernadzikowski
7380 Coca Cola Drive, #106
Hanover, MD 21076

Washington Suburban San. Comm.
4017 Hamilton Street
Hyattsville, MD 20781

M.G. Diamond
7500 Woodmont Avenue, #902
Bethesda, MD 20814

Montgomery County
Board of Education
850 Hungerford Drive
Rockville, MD 20850

ANTENNA SITE AGREEMENT

1. **Premises and Use.** SBA TOWERS IV, LLC, a Delaware limited liability company ("Owner") leases to **CELLCO PARTNERSHIP**, a Delaware general partnership d/b/a Verizon Wireless ("Tenant"), the site described below: Tower antenna space; Ground space for placement of Shelter for Tenant's base station equipment consisting of approximately 232 square feet; and space required for cable runs to connect telecommunications equipment and antennas, in the location(s) shown on Exhibit A together with a non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of Tenant, source of electric and telephone facilities (collectively, the "Site"). The Site will be used by Tenant for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, a Communications facility consisting of the antennas and related equipment set forth on Exhibit B (the "Equipment"). Similar equipment may be substituted provided that additional space and capacity is not utilized. If Tenant desires to place equipment on the Site in addition to that listed on Exhibit B, Owner and Tenant will negotiate the placement of the additional equipment and the associated increased rent. Tenant will use the Site in a manner which will not unreasonably disturb the occupancy of Owner's other tenants.

2. **Term.** The "Initial Term" of this Agreement shall be five (5) years beginning on the date set forth below ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date. This Agreement will automatically renew for four (4) additional terms (each a "Renewal Term") of five (5) years each, unless Tenant provides notice to Owner of its intention not to renew not less than one hundred and twenty (120) days prior to the expiration of the Initial Term or any Renewal Term. **COMMENCEMENT DATE:** The earlier of the date that Tenant begins installation of its Equipment at the Site or December 1, 2013, except as provided herein. If the Commencement Date is determined by the date Tenant begins installation of its Equipment, and such install occurs on or between the first and the fifteenth day of a month, the Commencement Date will be the first day of that month and, if such install occurs on or between the sixteenth and the last day of the month, the Commencement Date will be the first day of the following month. Owner agrees that in the event Tenant after making good faith efforts, does not obtain all permits and approvals required to install its Equipment at the Site by the Commencement Date, and Tenant provides written notice to Owner prior to the Commencement Date, Owner will reasonably

extend the Commencement Date to a date mutually agreed to by both parties.

3. **Rent.** Beginning on the Commencement Date, Rent will be paid in equal monthly

partial months to be prorated on a thirty (30) day month. Rent will be increased annually on the anniversary of the Commencement Date (during the Initial and all Renewal Terms) to 103% of the monthly rate in effect for the prior year. This Agreement shall be effective on the date last executed by the parties.

4. **Security Deposit.** Intentionally omitted.

5. **Title and Quiet Possession.** Owner represents and agrees (a) that it is in possession of the Site as lessee under a ground lease ("Ground Lease"); (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) there are no title impediments that would prohibit Tenant's intended use of the Site; and (e) that Tenant is entitled to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Tenant is not in default beyond the expiration of any cure period. Notwithstanding anything to the contrary contained in this Agreement, if the Site is subject to a ground lease, Owner may terminate this Agreement upon the termination of Owner's right to possession of the Site under the Ground Lease. Owner will not do, attempt, permit or suffer anything to be done which could be construed to be a violation of the Ground Lease. If applicable, Owner will furnish Tenant with a copy of the Ground Lease (financial and other confidential terms redacted) attached hereto as Exhibit E. This Agreement is subordinate to any mortgage or deed of trust now of record against the Site. Promptly after this Agreement is fully executed, if requested by Tenant, Owner will use its best efforts to obtain from the holder of any such mortgage or deed of trust to execute a non-disturbance agreement in a form provided by Tenant, and Owner will cooperate with Tenant at Tenant's sole expense toward such an end to the extent that such cooperation does not cause Owner additional financial liability. Tenant will not, directly or indirectly, on behalf of itself or any third party, communicate, negotiate, and/or contract with the lessor of the Ground Lease, unless Owner's rights under the Ground Lease have been terminated.

6. **Assignment/Subletting.** This Agreement may be sold, assigned or transferred by the Tenant without any approval or consent of the Owner to the Tenant's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or

Site ID: MD46713-A-03
Site Name: Suffield

Tenant Site ID:
Tenant Site Name: Halcyon

substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization, provided that the assuming party has comparable credit quality to that of Tenant. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the Owner, which such consent will not be unreasonably withheld or delayed. Tenant may sublet the Site together with the use of the rights-of-way within its sole discretion, upon notice to Owner. Any sublease that is entered into by Tenant shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto.

7. Access and Security. Tenant will have the reasonable right of access to the Tower where its equipment is located; provided that, Tenant must give Owner twenty-four (24) hours prior notice, including for installation of equipment. Tenant will have unrestricted access twenty-four (24) hours a day seven (7) days a week to the Pad or Shelter; provided that if Shelter is shared then Tenant must give twenty-four (24) hours prior notice. In the event of an emergency situation which poses an immediate threat of substantial harm or damage to persons and/or property (including the continued operations of Tenant's telecommunications equipment) which requires entry on the Tower or shared Shelter space, Tenant may enter same and take the actions that are required to protect individuals or personal property from the immediate threat of substantial harm or damage; provided that promptly after the emergency entry and in no event later than twenty-four (24) hours, Tenant gives telephonic and written notice to Owner of Tenant's entry onto the Site. Telephonic notice should be directed to Owner's Network Operations Center at 1-888-950-7483.

8. Notices. All notices and payments must be in writing and are effective when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery, to the addresses set forth below:

Tenant: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, NJ 07921
Attn: Network Real Estate

Owner: SBA Towers IV, LLC
5900 Broken Sound Parkway N.W.
2nd Floor
Boca Raton, FL 33487-2797
Attn: Site Administration
RE: MD46713-A-03/Suffield

Payments to: SBA Towers IV, LLC
P.O. Box 935406
Atlanta, GA 31193-5406
Attn: Accounts Receivable
RE: MD46713-A-03/Suffield

9. Installation and Improvements. Prior to installing or allowing any Equipment to be installed at the Site or making any changes, modifications or alterations to such Equipment, Tenant, at its expense, will obtain all required approvals and will submit to Owner plans and specifications of the planned installation and contractors to perform same or other activity, for Owner's approval which approval will not be unreasonably withheld, including, if requested by Owner, a tower loading study and/or an intermodulation study performed and certified by an independent licensed professional engineer. All installation of, or other work on Tenant's Equipment, will be at Tenant's sole expense. Upon completion of installation of any Equipment on the Site, Owner will have the right to inspect and reasonably approve all installation work. All installations, operation and maintenance of Equipment must be in accordance with Owner's policies set forth in Exhibit D. Owner reserves the right to prohibit operation of any Equipment it reasonably deems to be improperly installed, unsafe or not included in the installation design plan after providing 10 days written notice to Tenant. Owner agrees to cooperate with Tenant's reasonable requests, at Tenant's expense, with respect to obtaining any required zoning approvals for the Site and any improvements. Upon termination or expiration of this Agreement, Tenant shall remove its Equipment and improvements within 30 days and will restore the Site to the condition existing on the Commencement Date, except for ordinary wear and tear and insured casualty loss. If Tenant fails to remove its equipment as specified in the preceding sentence, Tenant's Equipment will be subject to disconnection, removal, and disposal by Owner. So long as Tenant's Equipment remains on the Site after 30 days from the termination or expiration date (even if it has been disconnected), Tenant will pay to Owner a hold-over fee equal to one hundred fifty percent (150%) of the then-effective monthly rent, prorated from the effective date of termination to the date the Equipment is removed from the Site. Owner will have the right (but not the obligation) to disconnect and remove Equipment from the Site. If, 30 days after the termination or expiration date, Owner disconnects and removes Equipment, Tenant will pay to Owner upon demand three hundred percent (300%) of the disconnection, removal and storage expenses incurred by or on behalf of Owner. If the Equipment is not reclaimed by Tenant within forty-five (45) days of its removal from the Site, Owner has the

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right to sell the Equipment and deduct therefrom any amounts due under this Agreement, returning the remainder to Tenant. In the event of an emergency where Tenant's equipment threatens the safety of human life and/or property, Owner shall immediately notify Tenant of such emergency and Tenant shall immediately cease operation of its Equipment until such emergency condition has been rectified. In the event Owner is unable to contact Tenant, Owner shall have the right to shut down Tenant's Equipment, provided Owner notifies Tenant within 24 hours of such occurrence.

10. Compliance with Laws. Except as provided herein, Tenant agrees to take the Site in strictly "AS IS" condition. Owner represents that the Site, its property contiguous thereto, and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Tenant will substantially comply with all applicable laws relating to its possession and use of the Site and its Equipment. Upon request by Owner, Tenant will produce satisfactory evidence that all equipment installed at the Site complies with federal regulations pertaining to radio-frequency radiation standards and is licensed with the FCC, if applicable. Owner accepts sole responsibility for the Site's compliance with all tower or building marking and lighting regulations promulgated by the Federal Aviation Administration "FAA" or the Federal Communications Commission "FCC," as applicable. Owner represents and warrants that the Site complies with all applicable tower or building marking or lighting regulations promulgated by the FAA or the FCC. Owner agrees that Tenant may install, at Tenant's sole cost and expense and as required for Tenant's Equipment, a (i) backup generator to provide backup power in the event of a power outage at the Site, and/or (ii) tower lighting alarm monitoring system (including, but not limited to, commercial power and a dedicated surveillance telephone line) to monitor the status of the tower/building lighting. Tenant's installation of such backup generator and/or tower/building lighting alarm monitoring system will not relieve Owner of its primary responsibility for compliance with all applicable tower or building marking and lighting requirements. If Tenant installs a temporary generator as described above or contracts with Owner to place a permanent generator at the Site, (i) Owner and Tenant acknowledge that Tenant must comply with all applicable laws and regulations concerning the installation, operation, maintenance and removal of Tenant's generator and/or back up power supply including but not limited to obtaining any and all necessary government approvals and permits, and (ii) Tenant agrees to indemnify, defend and hold harmless Owner for any and all costs, claims, administrative orders, causes of action, fines

and penalties which arise out of the installation, operation, maintenance and removal of the generator and or back up power supply used solely by Tenant, and (iii) Upon request of Owner, Tenant agrees to provide Owner with all relevant information concerning the Tenant's generator and/or back up power supply necessary for Owner to comply with any reporting obligations for which Owner, but not Tenant, is responsible as a result of statute or regulation.

11. Insurance. Tenant will procure and maintain a public liability policy, with limits of not less than \$1,000,000 for bodily injury, \$1,000,000 for property damage, \$2,000,000 aggregate, which minimum Owner may require adjusting at each renewal term, with a certificate of insurance to be furnished to Owner within thirty (30) days of written request. Any adjustment to any minimum insurance amounts required by Owner shall not exceed twenty-five percent (25%) of the required amount in effect immediately prior to such adjustment. Such policy will provide that cancellation will not occur without at least fifteen (15) days prior written notice to Owner. Tenant will cause Owner to be named as an additional insured on such policy.

12. Interference. Tenant understands that it is the intent of Owner to accommodate as many users as possible and that Owner may rent other space to any other entity or person(s) desiring its facilities. Owner will provide Tenant with a list of tenants who have commenced rental payments for the site attached hereto as Exhibit F. Tenant shall not cause, by its transmitter or other activities, interference to Owner or other tenants that have previously commenced rental payments. Tenant shall provide Owner with a list of frequencies to be used at the Site prior to putting said frequencies into operation. If interference occurs which involves Tenant, Owner may require that an intermodulation study be conducted at Tenant's cost. If Owner determines that the interference is the responsibility of Tenant, Owner will notify Tenant and Tenant shall have five (5) business days from date of notice to correct the interference and if not corrected, Tenant shall cease the transmission causing the interference, and Owner shall have all rights to any legal means necessary including injunctive relief and self help remedies to cause Tenant to cease transmission, except for intermittent testing for the purpose of correcting the interference. Prior to enforcing self help remedies, Owner agrees to notify Tenant's Network Operation Control Center at 800-852-2671. If interference cannot be corrected within sixty (60) calendar days from Tenant's receipt of Owner's notice, then Owner may terminate this Agreement without further obligations to Tenant. Owner will require similar interference language as outlined in this paragraph, in all future tenant agreements for this Site.

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13. Utilities. Owner represents that utilities adequate for Tenant's use of the Site are available. Tenant will pay for all utilities used by it at the Site and Tenant will install its own electric meter. Tenant will be responsible directly to the appropriate utility companies for all utilities required for Tenant's use of the Site. However, Owner agrees to cooperate with Tenant, at Tenant's expense, in its efforts to obtain utilities from any location provided by the Owner or the servicing utility. Temporary interruption in the power provided by the facilities will not render Owner liable in any respect for damages to either person or property nor relieve Tenant from fulfillment of any covenant or agreement hereof unless such interruption is caused by Owner's intentional misconduct or negligence. If any of Tenant's communications Equipment fails because of loss of any electrical power, and the restoration of the electrical power is within the reasonable control of Owner, Owner will use reasonable diligence to restore the electrical power promptly, but will have no claim for damages on account of an interruption in electrical service occasioned thereby or resulting therefrom. Notwithstanding the foregoing, if required by the electric utility provider, Tenant will cooperate with Owner in shutting down (and Owner may shut down) the electrical service to the Site and its Equipment in connection with any necessary maintenance operation conducted for the Site or the facilities thereon. Owner agrees to give Tenant reasonable prior notice, except in emergency situations, which notice may be oral.

14. Relocation Right. If determined necessary by Owner to relocate the tower, Owner will have the one-time right to relocate the telecommunications facility of Tenant, or any part thereof, to an alternate tower location acceptable to Tenant on Owner's property; provided, however, that such relocation will (1) be at Owner's sole cost and expense, (2) be performed exclusively by Tenant or its agents, (3) not result in any interruption of the communications service provided by Tenant on Owner's property, and (4) not impair, or in any manner alter, the quality of communications service provided by Tenant on and from Owner's property, and (5) be done in accordance with the terms and conditions contained in this Section 14. Upon relocation of Tenant's Equipment, the access and utility easement(s) of Tenant will be relocated as required, in the reasonable discretion of Tenant, to operate and maintain its Equipment. Owner will exercise its relocation right by (and only by) delivering written notice (the "Notice") to Tenant. In the Notice, Owner will propose an alternate site on Owner's property to which Tenant may relocate its Equipment. Tenant will have sixty (60) days from the date it receives the Notice to evaluate Owner's proposed relocation site, during which period Tenant will have the right to

conduct tests to determine the technological feasibility of the proposed relocation site. If Tenant fails to approve of such proposed relocation site in writing within said sixty (60) day period, then Tenant will be deemed to have disapproved such proposed relocation site. If Tenant disapproves such relocation site, then Owner may thereafter propose another relocation site by Notice to Tenant in the manner set forth above. Tenant's disapproval of a relocation site must be reasonable. If Tenant disapproves the Relocation Site, Tenant may terminate this Agreement with prior written notice to Owner. Any relocation site which Owner and Tenant agree upon in writing is referred to hereinafter as the "Relocation Site". Tenant will have a period of ninety (90) days after execution of a written agreement between the parties concerning the location and dimensions of the Relocation Site to relocate (at Owner's expense) its Equipment to the Relocation Site. Upon relocation of Tenant's Equipment, or any part thereof, to the Relocation Site, all references to the Site in this Agreement will be deemed to be references to the Relocation Site. Owner and Tenant hereby agree that the Relocation Site (including the access and utility rights of way) may be surveyed by a licensed surveyor at the sole cost of Tenant, and such survey will then replace Exhibit A and become a part hereof and will control or describe the Site. Except as expressly provided in this Section 14, Owner and Tenant hereby agree that in no event will the relocation of Tenant's Equipment, or any part thereof, affect, alter, modify or otherwise change any of the terms and conditions of this Agreement.

15. Termination by Tenant. Tenant may terminate this Agreement at anytime by notice to Owner without further liability if Tenant does not obtain, after making diligent efforts, all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the Communications facility, or if any such approval is canceled, expires or withdrawn or terminated by such governmental authority or third party following Tenant's diligent efforts to maintain such approval, or if Owner fails to have proper ownership of the Site or authority to enter into this Agreement. Upon termination, all prepaid rent will be retained by Owner.

16. Default. If the Rent or other amount due hereunder is not paid within 10 days from the date that Owner sends written notice to Tenant, Tenant will pay interest on the past due amounts at the lesser of (i) the rate of one and one-half percent (1.5%) per month, or (ii) the maximum interest rate permitted by applicable law. If either party is in default under this Agreement for a period of (a) ten (10) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty

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(30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. Further, Owner may accelerate and declare the entire unpaid Rent for the balance of the existing Term to be immediately due and payable forthwith. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty (30) day period and proceeds with due diligence to fully cure the default.

17. Taxes. Tenant shall pay all taxes, including, without limitation, sales, use and excise taxes, and all fees, assessments and any other cost or expense now or hereafter imposed by any government authority in connection with Tenant's payments to Owner, Tenant's Equipment or Tenant's use of the Site. In addition, Tenant shall pay that portion, if any, of the personal property taxes attributable to Tenant's Equipment. Tenant shall pay as additional rent any increase in real estate taxes levied against the Site and Tenant's Equipment attributable to the Tenant's use and occupancy of the Site. Payment shall be made by Tenant within fifteen (15) days after presentation of receipted bill and/or assessment notice which is the basis for the demand. Tenant shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which Tenant is wholly or partly responsible for payment under this Agreement. Owner shall reasonably cooperate with the Tenant in filing, prosecuting and perfecting any appeal or challenge to real estate taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar document at Tenant's sole cost and expense. In the event that as a result of any appeal or challenge by Tenant as set forth herein, there is a reduction, credit or repayment for any taxes previously paid by the Tenant, Owner agrees to promptly reimburse to Tenant the amount of said reduction, credit or repayment after the same is received by the Tenant.

18. Indemnity. Owner and Tenant each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees and costs) and claims of liability or loss which arise out of the use and/or occupancy of the Site by the indemnifying party including, without limitation, any damage occurring outside of the Site in connection with Tenant's installation of Equipment. This indemnity does not apply to any claims arising from the negligence or intentional misconduct of the

indemnified party. Except for its own acts of negligence or intentional misconduct, Owner will have no liability for any loss or damage due to personal injury or death, property damage, loss of revenues due to discontinuance of operations at the Site, libel or slander, or imperfect or unsatisfactory communications experienced by the Tenant for any reason whatsoever.

19. Hazardous Substances. Owner represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Tenant or Owner will not introduce or use any such substance on the Site in violation of any applicable law, or permit any discharge or release of such substance on the Site. Owner will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to the activity now conducted in, on or in any way related to the Site, unless such conditions or concerns are caused by the activities of the Tenant. The Parties shall hold each other harmless and indemnify each other from and assume all duties, responsibility and liability at its sole cost and expense, for all duties, responsibilities and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citations, directive, litigation, investigation or proceedings which is in any way related to failure to comply by the indemnifying party with any environmental or industrial hygiene law including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any hygiene concerns or conditions as may now or at any time hereafter be in effect. Owner shall hold harmless and indemnify Tenant from any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Site, or activities conducted thereon, unless such environmental or industrial hygiene conditions are caused by the acts or omissions of Tenant, in which event, Tenant shall hold harmless and indemnify Owner for the same.

20. Liens. Tenant will not permit any mechanics, materialman's or other liens to stand against the Site for any labor or material furnished to Tenant in connection with work of any character performed on the Site by or at the direction of the Tenant. In the event that any notice of lien will be filed or given,

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Tenant will, within thirty (30) days after the date of filing cause the same to be released or discharged by either payment, deposit, or bond. Owner will be indemnified by Tenant from and against any losses, damages, costs, expenses, fees or penalties suffered or incurred by Owner on account of the filing of the claim or lien.

21. Casualty or Condemnation. In the event of any damage, destruction or condemnation of the Site, or any part thereof, not caused by Tenant that renders the Site unusable or inoperable, Owner will have the right, but not the obligation, to provide an alternate location suitable for Tenant's intended use, whether on the same Site or another site, or to terminate this Agreement within thirty (30) days after the damage, destruction or condemnation. If Owner does not terminate this Agreement: (i) the rent payable hereunder will be reduced or abated in proportion to the actual reduction or abatement of use of the Site; and (ii) Owner will make any necessary repairs to the Site caused by the damage or destruction and will be entitled to use any and all insurance proceeds to pay for any repairs. In the event Owner has not commenced the repair, replacement or rebuilding of the Site within sixty (60) days of the damage or destruction, or fails to diligently pursue such repair, replacement or rebuilding, or fails to complete such repair, replacement or rebuilding within a reasonable time after the date of such damage or destruction, then Tenant may terminate this Agreement upon written notice to Owner. Owner will in no event be liable to Tenant for any damage to or loss of Tenant's Equipment, or loss or damage sustained by reason of any business interruption suffered by reason of any act of God, by Tenant's act or omission, or Tenant's violation of any of the terms, covenants or conditions of this Agreement, (unless caused solely by Owner's intentional misconduct or negligence).

22. Miscellaneous. (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) This Agreement is governed by the laws of the State in which the Site is located; (c) If requested by Tenant, Owner agrees promptly to execute and deliver to Tenant a recordable Memorandum of this Agreement in the form of Exhibit C; (d) This Agreement (including the Exhibits) constitutes the entire Agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each


provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; (f) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party; (g) Failure or delay on the part of Tenant or Owner to exercise any right, power, or privilege hereunder will not operate as a waiver thereof; waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of the provision, or of a breach of any other provision of this Agreement; and (h) Tenant agrees and acknowledges that, in conjunction with other broadcast entities which may transmit from the Site, if required by the FCC and upon reasonable notice, Tenant shall reduce power or terminate station operations to prevent possible overexposure of worker to RF radiation.

The following Exhibits are attached to and made a part of this Agreement: Exhibit "A", "B", "C", "D", "E" and "F".

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TENANT: CELLCO PARTNERSHIP d/b/a Verizon Wireless

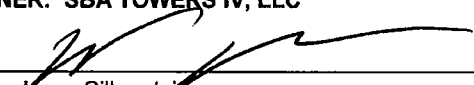
By: 
Title: Area Vice President Network
Date: 7.17.12

Witness: 

Tax No: 22-3372889
Address: One Verizon Way, Mail Stop 4AW100
Basking Ridge, NJ 07920

Witness: 

OWNER: SBA TOWERS IV, LLC

By: 
Title: Senior Vice President, Property Management
Date: 7.23.13

Witness: 

Tax No: 45-4817367
Address: 5900 Broken Sound Parkway N.W.
2nd Floor
Boca Raton, FL 33487-2797

Witness: 

**AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
TOWERCO II LLC**

THIS Amended and Restated Certificate of Formation of TOWERCO II LLC, a Delaware limited liability company (the "*Company*"), dated October 1, 2012, has been duly executed and is being filed by the undersigned, as an authorized person, in accordance with the provisions of 6 Del. C. § 18-208, to amend and restate the original Certificate of Formation of the Company, which was filed on April 16, 2008 under the name Towerview Assets LLC with the Secretary of State of Delaware, as hereafter amended (the "*Certificate*"), to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, *et seq.*).

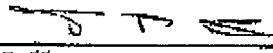
The Certificate is hereby amended and restated in its entirety to read as follows:

"FIRST: The name of the Limited Liability Company is SBA 2012 TC II, LLC.

SECOND: The address of the registered office of the Company in the State of Delaware is 3411 Silverside Road, Rodney Building, Suite 104, New Castle County, Wilmington, Delaware 19810. The name and address of the registered agent of the Company for service of process in the State of Delaware is Corporate Creations Network, Inc., 3411 Silverside Road, Rodney Building, Suite 104, New Castle County, Wilmington, Delaware 19810."

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Formation as of the date first-above written.

SBA 2012 TC Finance, LLC, a Delaware limited liability company, its sole member, as an authorized person


Thomas P. Hunt
Senior Vice President, General Counsel and
Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:09 AM 10/01/2012
FILED 10:09 AM 10/01/2012
SRV 121083478 - 4534550 FILE

TOTAL P.02

Prepared by and after recording return to:
TowerCo II
112 Towerview Court
Cary, NC 27513
919-653-5703

**ASSIGNMENT AND ASSUMPTION AGREEMENT
AND MASTER BILL OF SALE**

This Assignment and Assumption Agreement and Master Bill of Sale ("**Agreement**") is entered into as of August 8, 2008 by and between **TOWERCO LLC**, a Delaware limited liability company, with a mailing address of 112 Towerview Court, Cary, NC 27513 ("**Assignor**"), and **TOWERCO II LLC**, a Delaware limited liability company, with a mailing address of 112 Towerview Court, Cary, NC 27513 ("**Assignor**").

RECITALS

WHEREAS, Assignor is a party to that certain lease of real property dated October 16, 2006 ("**Lease**") by and between Izaak Walton League of America, Inc. with an address of 707 Conservation Lane, Gaithersburg, MD ("**Lessor**"), and Assignor as Lessee. Assignor took assignment of the Lease pursuant to an Assignment of Lease dated April 16, 2008 attached hereto as Exhibit C.

WHEREAS, pursuant to the Lease, Assignor has certain rights, title and interest in and to a portion of a certain parcel of land in Montgomery County, Maryland (the "**Premises**"), as further described on Exhibit B attached hereto, for the construction, maintenance and operation of a communications facility thereon;

WHEREAS, the Premises are a portion of that certain real property described on Exhibit A attached hereto (the "**Parent Parcel**"); and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume all of Assignor's rights, title and interest in and to the Lease and the Premises.

WHEREAS, Assignor desires to assign, transfer, convey and deliver to Assignee all right, title and interest of Assignor in and to the Assets (as defined below) in accordance with the terms of the Purchase Agreement. The Purchase Agreement also provides for certain representations and

warranties of the Assignor and for the assumption by Assignee of certain liabilities and obligations of Assignor and the assignment to Assignee of Assignor's rights associated with the liabilities and obligations assumed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. (a) Assignor hereby assigns, transfers, conveys, sells and delivers to Assignee all of its rights, title and interest in and to (i) the Lease and all of Assignor's rights, title and interests in and to the Premises, including without limitation all related easements, ancillary agreements and other appurtenant rights pertaining to and running with the real property subject to the Lease and the Premises, including all leases, licenses and other agreements wherein any portion of the communications tower sites located on the Premise are demised by Assignor for the use or occupancy of others (the "Tower Leases"); (ii) the communications towers and all other improvements, equipment, fixtures and fittings and any other personal property located on or used in connection with the Premises and owned by Assignor (the "Tower"), (iii) all servitudes, easements and other rights appurtenant to the Premises and included in the Ground Leases (including, without limitation, those regarding access and utilities), (iv) all deposits and prepayments pertaining to the Premises, the Tower, the Ground Leases or any of the other items described above, (v) all approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained from governments or governmental agencies with respect to the Premises and the Tower, and (vi) all books, records, files, documents, plats, architectural plans, drawings, specifications, studies, reports and other printed, electronic or written materials pertaining to the foregoing (collectively, the "Assets").

(b) TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns forever, to its and their own use and benefit.

(c) Assignor hereby irrevocably constitutes and appoints Assignee its true and lawful attorney-in-fact, with full power of substitution and resubstitution, in the name of Assignor or Assignee, but on behalf and for the benefit of Assignee, to demand, collect and receive for the account of Assignee all of the Assets; to institute or prosecute, in the name of Assignor or otherwise, all proceedings that Assignee may deem necessary or convenient in order to realize upon, affirm or obtain title to or possession of or to collect, assert or enforce any claim, right, or title of any kind in or to the Assets; and to defend and compromise any and all actions, suits or proceedings in respect of any of the Assets. Assignor agrees that the foregoing powers are coupled with an interest and are and shall be irrevocable by Assignor for any reason.

2. Assignee hereby assumes and agrees to perform, discharge and satisfy, to the extent arising after the date hereof, all of the obligations of Assignor relating to the Assets, including, without limitation, all obligations of Assignor (i) as lessee, pursuant to the terms of the Ground Leases, and (ii) as lessor pursuant to the terms of any and all Tower Leases. Assignee shall not have any obligation, duty or liability under the Ground Leases or any leases arising or accruing on or before the date hereof and Assignor shall indemnify and hold harmless Assignee from any liability arising under the Ground Leases and/or Tower Leases before the date hereof.

3. Assignor hereby covenants and agrees with Assignee that it shall duly execute and

deliver all such further instruments of sale, transfer, assignment, and conveyance and all such notices, releases, acquittances, certificates of title and other documents as may be reasonably necessary to sell, transfer, assign and convey to and vest in Assignee the Assets hereby sold, transferred, assigned and conveyed or intended so to be.

4. All of the terms and provisions of this Agreement shall be binding upon Assignor, its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.

5. This Agreement may be executed in multiple originals, each of which shall be deemed to be an original act, and in multiple counterparts and the signature pages collated to collectively form the original document.

6. This Agreement shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first written above.

ASSIGNOR:

TOWERCO LLC, a Delaware limited liability company

Address of Assignor:

112 Towerview Court

Cary, North Carolina 27513

By: Daniel Hunt

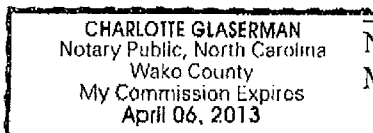
Name: Daniel Hunt

Its: Vice President and Chief Financial Officer

State of North Carolina)
) ss:
County of Wake)

On August 8, 2008, before me, the undersigned officer, personally appeared Daniel Hunt with an address of 112 Towerview Court, Cary, NC 27513, personally known to me to be the Chief Financial Officer of TowerCo LLC, a Delaware limited liability company (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:



Charlotte Glaserman
Notary Public
My commission expires: _____

ASSIGNEE:

TOWERCO II LLC, a Delaware limited liability company

Address of Assignee:
112 Towerview Court
Cary, North Carolina 27513

By: Daniel Hunt

Name: Daniel Hunt

Its: Vice President and Chief Financial Officer

State of North Carolina)
) ss:
County of Wake)

On August 8, 2008, before me, the undersigned officer, personally appeared Daniel Hunt with an address of 112 Towerview Court, Cary, NC 27513, personally known to me to be the Chief Financial Officer of TowerCo II LLC, a Delaware limited liability company (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:

Charlotte Glaserman

Notary Public

My commission expires: _____

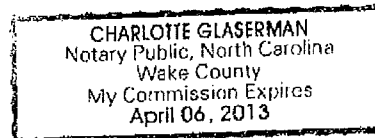


EXHIBIT C

ASSIGNMENT OF LEASE AGREEMENT

Prepared by, and
Return Document and
Future Tax Statements to:

TowerCo LLC
112 Towerview Court
Cary, NC 27513
Attn: Legal

Property Information: County of Montgomery, State of MD

Site ID: MD3807D Suffield

ASSIGNMENT OF LEASE

This Assignment of Lease ("Assignment") is made and entered into effective as of the 16 day of APRIL, 2008, ("Transfer Date") by and between and Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation with an address of Mailstop: KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, KS 66251-2650 ("Assignor"), and TowerCo LLC a Delaware limited liability company with an address at 112 Towerview Court, Cary, North Carolina 27513 ("Assignee").

RECITALS

WHEREAS, Assignor is a party to that certain Communications Site Lease Agreement (Ground) dated October 16, 2006 ("Lease") by and between Izaak Walton League of America, Inc., as "Owner" or "Landlord" ("Owner"), and Assignor as Lessee; as evidenced by a Memorandum of Lease recorded in Book _____, Page _____ of the official records of Montgomery County, MD.

WHEREAS, pursuant to the Lease, Assignor has certain rights, title and interest in and to a portion of a certain parcel of land in Montgomery County, MD (the "Premises"), as further described on Exhibit B attached hereto, for the construction, maintenance and operation of a communications facility thereon;

EXHIBIT C

WHEREAS, the Premises are a portion of that certain real property described on Exhibit A attached hereto (the "Parent Parcel"); and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume all of Assignor's rights, title and interest in and to the Lease and the Premises.

ASSIGNMENT

NOW, THEREFORE, for and in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Assignment.
2. Incorporation of Exhibits. The Premises are more particularly described on Exhibit B hereto which is incorporated by this reference together with Exhibit A.
3. Assignment and Assumption. Assignor does hereby assign, transfer, set over, and deliver to Assignee, all of Assignor's rights, title and interests in and to the Lease and Premises, including without limitation all related easements, ancillary agreements and other appurtenant rights pertaining to and running with the real property subject to the Lease and the Premises, including the Tenant Leases on Exhibit C, if any. Assignee does hereby accept, assume and agree to be bound by all the terms and conditions which are the responsibility of the lessee or tenant under the Lease, and all the terms and conditions of all related easements and ancillary agreements and other appurtenant rights pertaining to and running with the real property subject to the Lease and the Premises, and which arise, are incurred, or are required to be performed from and after the date of this Assignment, including those within the Tenant Leases on Exhibit C, if any. Assignor will indemnify, defend and hold harmless Assignee, its successors and assigns and their respective agents, employees, directors and officers from and against any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals) of any nature whatsoever (collectively, "Losses and Liabilities"), that arise from or are in any way related to the Lease as a result of any negligent act or omission or intentional misconduct of Assignor prior to the Transfer Date. Assignee shall indemnify, defend and hold harmless Assignor, its successors and assigns and their respective agents, employees, directors and officers from and against any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals) of any nature whatsoever, that arise from or are in any way related to the Lease as a result of any negligent act or omission or intentional misconduct of Assignee from the Transfer Date forward.
4. Further Assurances. The parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts and assurances as may reasonably be required to confirm the transfers made pursuant to this Assignment.

EXHIBIT C

5. Default. Assignor represents and warrants unto Assignee that as of the Transfer Date, Assignor is not in default under the Lease, and all of the rents payable by Assignor, if any, under the Lease have been duly paid and acknowledged.

6. Counterparts. This Assignment may be executed in two or more counterparts, all of which taken together shall constitute one and the same instrument.

7. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of Washington without reference to its conflicts of laws principles. Notwithstanding the foregoing, to the extent that the law of the state in which the real property subject to the Lease is located is mandatory rather than permissive for the issue in question (such as, by way of example only, with respect to possession), the laws of the state in which the real property is located shall govern.

8. Successors and Assigns. The terms and conditions of this Assignment shall run with the Premises and shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed and delivered effective as of the date first above written.

ASSIGNOR:

Nextel Communications of the Mid-Atlantic,
Inc., a Delaware corporation

By: John E. Beauoin

Name: JOHN E. BEAUOIN

Its: MGR, CONTRACTS

Address of Assignor:

Mailstop: KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650

ASSIGNEE:

TOWERCO LLC, a Delaware limited
liability company

By: Daniel Hunt

Name: Daniel Hunt

Its: Chief Financial Officer

Address of Assignee:

112 Towerview Court
Cary, North Carolina 27513

EXHIBIT C

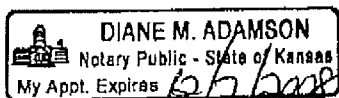
State of KANSAS)

County of JOHNSON)

ss:

On APRIL 15, 2008, before me, the undersigned officer, personally appeared: _____, with an address of Mailstop: KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, KS 66251-2650 personally known to me to be the ~~MANAGER~~ CONTRACTS OF NEWEL COMMUNICATIONS OF MID ATLANTIC, INC., a DELAWARE corporation/company, (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his/her authorized capacity as such officer as his/her free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:



Diane M. Adamson
Notary Public
My commission expires: 12/7/2008

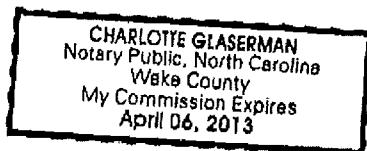
State of NORTH CAROLINA)

) ss:

County of WAKE)

On April 16, 2008, before me, the undersigned officer, personally appeared Daniel Hunt with an address of 112 Towerview Court, Cary, NC 27513, personally known to me to be the Chief Financial Officer of TowerCo LLC, a Delaware limited liability company (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:



Charlotte Glaserme
Notary Public
My commission expires: 4-6-13

ASSIGNMENT OF LEASE AGREEMENT

Prepared by, and
Return Document and
Future Tax Statements to:

TowerCo LLC
112 Towerview Court
Cary, NC 27513
Attn: Legal

Property Information: County of Montgomery, State of MD

Site ID: **MD3807D Suffield**

ASSIGNMENT OF LEASE

This Assignment of Lease ("Assignment") is made and entered into effective as of the 16 day of APRIL, 2008, ("Transfer Date") by and between and **Nextel Communications of the Mid-Atlantic, Inc.**, a Delaware corporation with an address of Mailstop: KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, KS 66251-2650 ("Assignor"), and **TowerCo LLC a Delaware limited liability company** with an address at 112 Towerview Court, Cary, North Carolina 27513 ("Assignee").

RECITALS

WHEREAS, Assignor is a party to that certain Communications Site Lease Agreement (Ground) dated October 16, 2006 ("Lease") by and between Izaak Walton League of America, Inc., as "Owner" or "Landlord" ("Owner"), and Assignor as Lessee; as evidenced by a Memorandum of Lease recorded in Book _____, Page _____ of the official records of Montgomery County, MD.

WHEREAS, pursuant to the Lease, Assignor has certain rights, title and interest in and to a portion of a certain parcel of land in Montgomery County, MD (the "Premises"), as further described on Exhibit B attached hereto, for the construction, maintenance and operation of a communications facility thereon;

WHEREAS, the Premises are a portion of that certain real property described on Exhibit A attached hereto (the "Parent Parcel"); and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume all of Assignor's rights, title and interest in and to the Lease and the Premises.

ASSIGNMENT

NOW, THEREFORE, for and in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Assignment.
2. Incorporation of Exhibits. The Premises are more particularly described on Exhibit B hereto which is incorporated by this reference together with Exhibit A.
3. Assignment and Assumption. Assignor does hereby assign, transfer, set over, and deliver to Assignee, all of Assignor's rights, title and interests in and to the Lease and Premises, including without limitation all related easements, ancillary agreements and other appurtenant rights pertaining to and running with the real property subject to the Lease and the Premises, including the Tenant Leases on Exhibit C, if any. Assignee does hereby accept, assume and agree to be bound by all the terms and conditions which are the responsibility of the lessee or tenant under the Lease, and all the terms and conditions of all related easements and ancillary agreements and other appurtenant rights pertaining to and running with the real property subject to the Lease and the Premises, and which arise, are incurred, or are required to be performed from and after the date of this Assignment, including those within the Tenant Leases on Exhibit C, if any. Assignor will indemnify, defend and hold harmless Assignee, its successors and assigns and their respective agents, employees, directors and officers from and against any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals) of any nature whatsoever (collectively, "Losses and Liabilities"), that arise from or are in any way related to the Lease as a result of any negligent act or omission or intentional misconduct of Assignor prior to the Transfer Date. Assignee shall indemnify, defend and hold harmless Assignor, its successors and assigns and their respective agents, employees, directors and officers from and against any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals) of any nature whatsoever, that arise from or are in any way related to the Lease as a result of any negligent act or omission or intentional misconduct of Assignee from the Transfer Date forward.
4. Further Assurances. The parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts and assurances as may reasonably be required to confirm the transfers made pursuant to this Assignment.

5. Default. Assignor represents and warrants unto Assignee that as of the Transfer Date, Assignor is not in default under the Lease, and all of the rents payable by Assignor, if any, under the Lease have been duly paid and acknowledged.

6. Counterparts. This Assignment may be executed in two or more counterparts, all of which taken together shall constitute one and the same instrument.

7. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the State of Washington without reference to its conflicts of laws principles. Notwithstanding the foregoing, to the extent that the law of the state in which the real property subject to the Lease is located is mandatory rather than permissive for the issue in question (such as, by way of example only, with respect to possession), the laws of the state in which the real property is located shall govern.

8. Successors and Assigns. The terms and conditions of this Assignment shall run with the Premises and shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

IN WITNESS WHEREOF, the parties have caused this Assignment to be duly executed and delivered effective as of the date first above written.

ASSIGNOR:

Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation

By: John E. Beauquin

Name: JOHN E. BEAUQUIN

Its: MGR, CONTRACTS

Address of Assignor:

Mailstop: KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650

ASSIGNEE:

TOWERCO LLC, a Delaware limited liability company

By: Daniel Hunt

Name: Daniel Hunt

Its: Chief Financial Officer

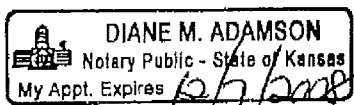
Address of Assignee:

112 Towerview Court
Cary, North Carolina 27513

State of KANSAS)
) ss:
County of JOHNSON)

On APRIL 15, 2008, before me, the undersigned officer, personally appeared: _____, with an address of Mailstop: KSOPHT0101-Z2650, 6391 Sprint Parkway, Overland Park, KS 66251-2650 personally known to me to be the MANAGER, CONTRACTS OF NEXTEL COMMUNICATIONS OF MID ATLANTA, INC., a DELEVARE corporation/company, (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his/her authorized capacity as such officer as his/her free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:

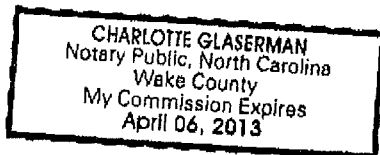


Diane M. Adamson
Notary Public
My commission expires: 12/7/2008

State of NORTH CAROLINA)
) ss:
County of WAKE)

On April 16, 2008, before me, the undersigned officer, personally appeared Daniel Hunt with an address of 112 Towerview Court, Cary, NC 27513, personally known to me to be the Chief Financial Officer of TowerCo LLC, a Delaware limited liability company (hereinafter, the "Corporation") and that as such officer, being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

Witness my hand and official seal as of the foregoing acknowledgments:



Charlotte Glaserman
Notary Public
My commission expires: 4-6-13

Site: MD 3807 A - Suffield
Market: Baltimore / Washington

COMMUNICATIONS SITE LEASE AGREEMENT (GROUND)

This COMMUNICATIONS SITE LEASE AGREEMENT ("Agreement") is dated as of _____, 200____, by Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation, ("Nextel" or "Tenant") and Izaak Walton League of America, Inc. ("Owner" or "Landlord").

For One Dollar (\$1.00) paid to Owner, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Owner owns a parcel of land ("Land") located in the City of Gaithersburg, County of Montgomery, State of Maryland, commonly known as 707 Conservation Lane (APN: 09-02774073). The Land is more particularly described in Exhibit A annexed hereto. Subject to the provisions of Paragraph 2 below ("Effective Date/Due Diligence Period"), Owner hereby leases to Nextel and Nextel leases from Owner approximately 1050 square feet of the Land and all access and utility easements necessary or desirable therefore ("Premises"), as may be described generally in Exhibit B annexed hereto.
2. **Effective Date/Due Diligence Period.** This Agreement shall be effective on the date of full execution hereof ("Effective Date"). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 3 below ("Due Diligence Period"), Nextel shall only be permitted to enter the Land for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "Investigations and Tests") that Nextel may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Nextel determines, during the Due Diligence Period, that the Premises are not appropriate for Nextel's intended use, or if for any other reason, or no reason, Nextel decides not to commence its tenancy of the Premises, then Nextel shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Nextel expressly acknowledge and agree that Nextel's access to the Land during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Nextel shall not be considered an owner or operator of any portion of the Land, and shall have no ownership or control of any portion of the Land (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.
3. **Term.** The term of Nextel's tenancy hereunder shall commence upon the start of construction of the Tenant Facilities (as defined in Paragraph 6 below) or eighteen (18) months following the Effective Date, whichever first occurs ("Term Commencement Date") and shall terminate on the fifth anniversary of the Term Commencement Date ("Term") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for five (5) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew prior to commencement of the succeeding Renewal Term.
4. **Rent.** Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent [REDACTED] per month ("Rent"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Landlord at 707 Conservation Lane, Gaithersburg, MD 20878; Attention: Charlie Wiles. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord. Rent shall increase on each anniversary of the Term Commencement Date by an amount equal to [REDACTED] of the Rent in effect for the previous year.
5. **Use.** From and after the Term Commencement Date, the Premises may be used by Tenant for any lawful activity in connection with the provision of communications services, and Tenant shall have the ongoing right to perform such Investigations and Tests as Tenant may deem necessary or desirable. Landlord agrees to cooperate with Tenant, at no out of pocket expense to Landlord, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.
6. **Facilities; Utilities; Access.**

(a) Tenant has the right to construct, erect, maintain, test, replace, remove, operate and upgrade on the Premises communications facilities, including without limitation an antenna tower or pole and foundation, utility lines, transmission lines, an air conditioned equipment shelter(s), electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore ("Tenant Facilities"). In connection therewith, Tenant has the right to do all work necessary to prepare, maintain and alter the Premises for Tenant's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Tenant's construction and installation work shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner. Tenant shall hold title to the Tenant Facilities and all of the Tenant Facilities shall remain Tenant's personal property and are not fixtures. Tenant has the right to remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement, and Tenant shall repair any damage to the Premises caused by such removal. Upon the expiration or earlier termination of this Agreement, Tenant shall remove the Tenant Facilities from the Land, but is not required to remove any foundation more than one (1) foot below grade level.

(b) Tenant shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Tenant shall have the right to draw electricity and other utilities from the existing utilities on the Land or obtain separate utility service from any utility company that will provide service to the Land. In connection therewith, Landlord hereby grants to the local telephone, power and utility companies (as appropriate) non-exclusive rights to locate, construct, install, operate, maintain, repair, replace, alter, extend, and/or remove cables and lines on, over, under and across a portion of Landlord's Property as necessary or desirable therefore. Landlord agrees to sign such documents or easements, at no cost to Tenant or the utility companies, as may be required by said utility companies to provide such service to the Premises. Any easements necessary for such power or other utilities will be at locations reasonably acceptable to Landlord and the servicing utility company.

(c) Tenant, Tenant's employees, agents and contractors shall have access to the Premises without notice to Landlord twenty-four (24) hours a day, seven (7) days a week, at no charge. Landlord grants to Tenant, and Tenant's agents, employees and contractors, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the Land, and such right and easement may be described generally in Exhibit B.

(d) Landlord shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Tenant's use of such roadways. Notwithstanding the foregoing, Tenant may construct an access road to the Premises ("Access Road"), across the Land as more fully described in Exhibit B, if Tenant reasonably determines such Access Road is necessary for Tenant's ingress to and egress from the Premises. Tenant shall be responsible for maintaining and repairing such Access Road until the expiration or earlier termination of this Agreement, at its sole expense, less reasonable wear and tear or loss by casualty or other causes beyond Tenant's reasonable control. Landlord shall be responsible for any damages to the Access Road caused by use of the Access Road by Landlord, or Landlord's agents, employees, licensees, invitees or contractors, and shall be responsible for maintaining and repairing the Access Road from and after the expiration or earlier termination of this Agreement, which costs shall be Landlord's sole responsibility.

7. Interference.

(a) Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Land, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities.

(b) Subsequent to the installation of the Tenant Facilities, Landlord will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Land or property contiguous thereto owned or controlled by Landlord, if such modifications are likely to cause interference with Tenant's operations. In the event interference occurs, Landlord agrees to use best efforts to eliminate such interference in a reasonable time period. Landlord's failure to comply with this paragraph shall be a material breach of this Agreement.

8. **Taxes.** If personal property taxes are assessed, Tenant shall pay any portion of such taxes directly attributable to the Tenant Facilities. Landlord shall pay when due all real property taxes, assessments and deferred taxes on the Land.

9. Waiver of Landlord's Lien.

(a) Landlord waives any lien rights it may have concerning the Tenant Facilities, all of which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without Landlord's consent.

(b) Landlord acknowledges that Tenant has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Tenant Facilities ("Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. Termination. This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice; or (ii) by Tenant if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of the Tenant Facilities; or (iii) by Tenant if Tenant is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (iv) by Tenant if any environmental report for the Land reveals the presence of any Hazardous Material after the Term Commencement Date; or (v) by Tenant if Tenant determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; or (vi) by Tenant if the Landlord fails to deliver to Tenant an executed memorandum of agreement or non-disturbance and attornment agreement pursuant to Paragraphs 19(g) and (h) below.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Insurance.

(a) Tenant, at Tenant's sole cost and expense, shall procure and maintain commercial general liability ("CGL") insurance covering bodily injury and property damage with a combined single limit of at least Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Subject to the standard exclusions and limitations of CGL policies, such insurance shall insure, on an occurrence basis, against all liability of Tenant, its employees and agents arising out of or in connection with Tenant's use of the Premises, all as provided for herein. Within thirty (30) days following the Effective Date, Tenant shall provide Landlord with a certificate of insurance ("COI") evidencing the coverage required by this Paragraph 12. Alternatively, Tenant shall have the option of providing Landlord with evidence of such coverage electronically by providing to Landlord a Uniform Resource Locator ("URL") Link to access Tenant's memorandum of insurance ("MOI") website in order for Landlord to review the coverage required by this Paragraph 12.

(b) Landlord, at Landlord's sole cost and expense, shall procure and maintain CGL insurance covering bodily injury and property damage with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Subject to the standard exclusions and limitations of CGL policies, such insurance shall insure, on an occurrence basis, against all liability of Landlord, its employees and agents arising out of or in connection with Landlord's use, occupancy and maintenance of the Land and Landlord's property located thereon. Within thirty (30) days following the Effective Date, Landlord shall provide Tenant with a COI evidencing the coverage required by this Paragraph 12. Alternatively, Landlord shall have the option of providing Tenant with evidence of such coverage electronically by providing to Tenant a URL Link to access Landlord's MOI website in order for Tenant to review the coverage required by this Paragraph 12.

(c) Each party shall be named as an additional insured on the other's policy.

13. Waiver of Subrogation. Landlord and Tenant release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Land or the Premises or to the Tenant Facilities or any other property thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Landlord and Tenant shall cause each insurance policy obtained by them to provide that the insurance company

waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither Landlord nor Tenant shall be liable to the other for any damage caused by any of the risks insured against under any insurance policy required by Paragraph 12.

14. **Liability and Indemnity.** Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party or its agents, employees or contractors in or about the Land. The duties described in this Paragraph 14 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

15. **Assignment and Subletting.** Tenant may assign this Agreement, or sublet or license the Premises or any portion thereof, which shall be evidenced by written notice thereof to Landlord within a reasonable period of time thereafter. Upon assignment, Tenant shall be relieved of all future performance, liabilities, and obligations under this Agreement, provided that the assignee assumes all of Tenant's obligations herein. Landlord may assign this Agreement, which assignment may be evidenced by written notice to Tenant within a reasonable period of time thereafter, provided that the assignee assumes all of Landlord's obligations herein, including but not limited to, those set forth in Paragraph 9 ("Waiver of Landlord's Lien") above. This Agreement shall run with the Land and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary contained in this Agreement, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

16. **Warranty of Title and Quiet Enjoyment.** Landlord warrants that: (i) Landlord owns the Land in fee simple, has rights of access thereto from the nearest public roadway, which Tenant is legally permitted to use, and the Land and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date; and (ii) Landlord covenants and agrees with Tenant that Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods.

17. **Repairs.** Tenant shall repair any damage to the Premises or Land caused by the negligence or willful misconduct of Tenant. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Tenant shall restore the Premises to substantially the condition in which it existed upon start of construction, reasonable wear and tear and loss by casualty or other causes beyond Tenant's reasonable control excepted.

18. **Hazardous Material.**

(a) As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Land in violation of any Environmental Law (as defined below), and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Land in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Landlord from, and Landlord has no knowledge that notice has been given to any predecessor owner or operator of the Land by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage (or the presence of any Hazardous Material) in, on, under, upon or affecting the Land; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Land in violation of any Environmental Law.

(b) Without limiting Paragraph 14, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 18 by such party; and/or (ii) environmental conditions or noncompliance with any Environmental Law (as defined below) that result, in the case of Tenant, from operations in or about the Land by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Land by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The provisions of this Paragraph 18 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement.

(c) "Hazardous Material" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any Environmental Law, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any Environmental Law.

(d) "Environmental Law" means any and all present or future federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) Both parties represent and warrant that their use of the Land and their real and personal property located thereon is in compliance with all applicable, valid and enforceable statutes, laws, ordinances and regulations of any competent government authority.

(c) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(e) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Landlord:

Izaak Walton League of America, Inc.
707 Conservation Lane
Gaithersburg, MD 20878
Attn: Charlie Wiles
Phone: 301-548-0150

Tenant:

Nextel Communications of the Mid-Atlantic, Inc.
7055 Samuel Morse Drive, Suite 100
Columbia MD 21046
Attn: Property Manager
Phone: 410-953-7451

With a copy to:

Sprint Nextel Law Department
Mailstop KSOPIT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020
Attn: Real Estate Attorney

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

(f) This Agreement shall be governed by the laws of the State of Maryland.

(g) Landlord agrees to execute and deliver to Tenant a Memorandum of Agreement in the form annexed hereto as Exhibit C and acknowledges that such Memorandum of Agreement will be recorded by Tenant in the official records of the County where the Land is located.

(h) In the event the Land is encumbered by a mortgage or deed of trust, Landlord agrees to obtain and deliver to Tenant an executed and acknowledged non-disturbance and attornment instrument for each such mortgage or deed of trust in a recordable form reasonably acceptable to both parties.

(i) Landlord agrees to fully cooperate with Tenant (including obtaining and/or executing necessary documentation) to clear any outstanding title issues that could adversely affect Tenant's interest in the Premises created by this Agreement.

(j) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

(k) Each of the parties hereto represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.

(l) Both parties took part in the negotiation of this Agreement and agree that legal concepts intended to construe the Agreement against the drafter will not apply against either party.

(m) In the event of any breach or default by either party, the other party shall be entitled to all rights and remedies provided for in this Agreement and/or available at law, in equity, by statute or otherwise, all of which rights and remedies shall be cumulative (and not exclusive).

(n) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

(o) All Recitals set forth above, and all Riders and Exhibits annexed hereto, form material parts of this Agreement and are hereby incorporated herein by this reference.

(p) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

20. **Supplier Diversity.** Nextel is committed to equal employment and vendor diversity. As part of this commitment, it is the policy of Nextel that small business concerns, veteran-owned small business concerns, HUBZone small business concerns, women-owned small business concerns, small disadvantaged business concerns (including 8(a) business concerns) and historically black colleges and universities and minority institutions ("Diverse Suppliers," as further defined below) shall have the maximum practicable opportunity to participate in performance of contracting between Nextel and its vendors. The term "Diverse Supplier(s)" shall mean and be defined as set forth in Federal Acquisition Regulation Part 19 and 13 C.F.R. Part 121. In addition, "Historically black colleges and universities," as included in the definition of "Diverse Suppliers" for purposes of this Agreement, shall mean and include institutions determined by the Secretary of Education to meet the requirements of 34 C.F.R. Section 608.2; any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and "Minority institutions," as included in the definition of "Diverse Suppliers" for purposes of this Agreement, shall mean institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. § 1135d-5(3)); and also Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. § 1059c(b)(1)). Landlord shall confirm in the space below whether or not Landlord reasonably believes it qualifies as a Diverse Supplier.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

LANDLORD:

Izaak Walton League of America, Inc.

By: 

Name: Paul W. Hansen

Title: Executive Director

Date: 10/16/06

Tax I.D.: 36-1930035

Diverse Supplier: ☐ Yes ☐ No

TENANT:

Nextel Communications of the Mid-Atlantic, Inc.,
a Delaware corporation

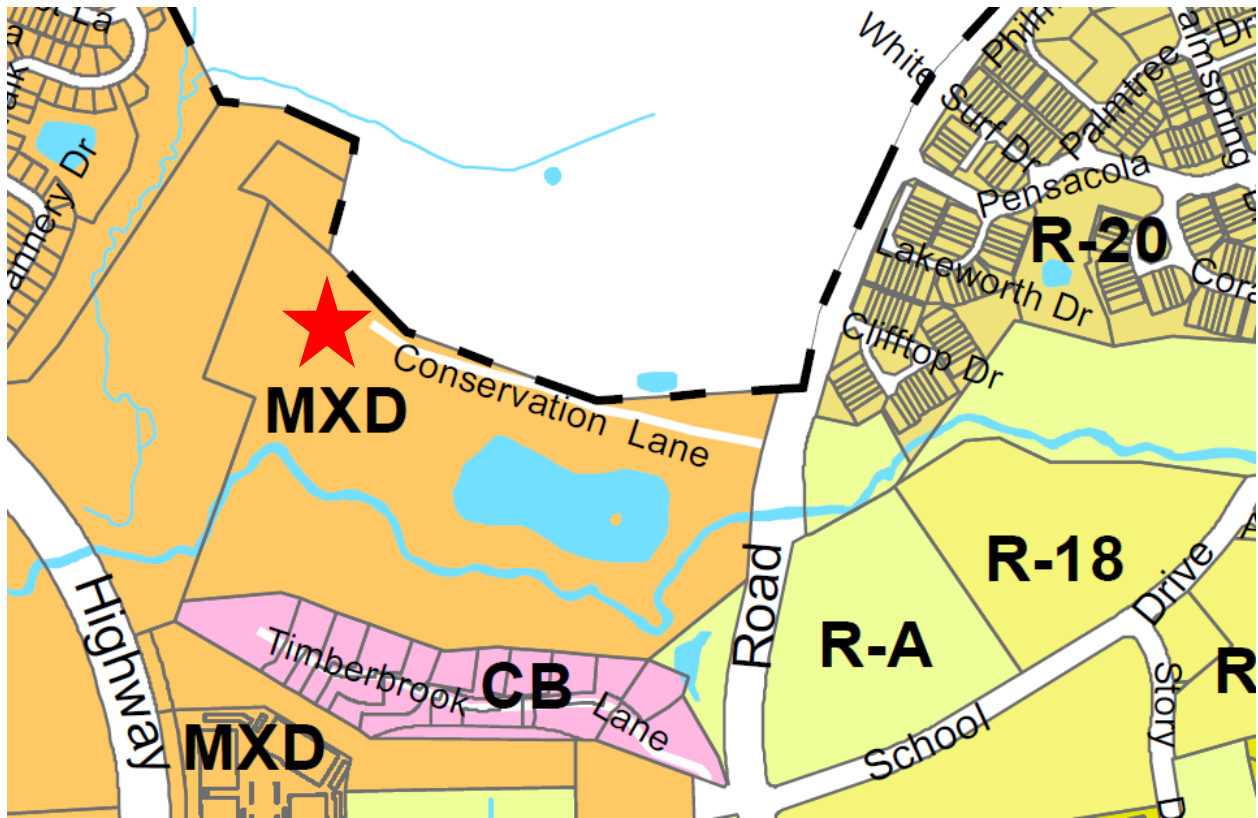
By: 

Name: THOMAS KINCAID

Title: MANAGER

SITE DEVELOPMENT

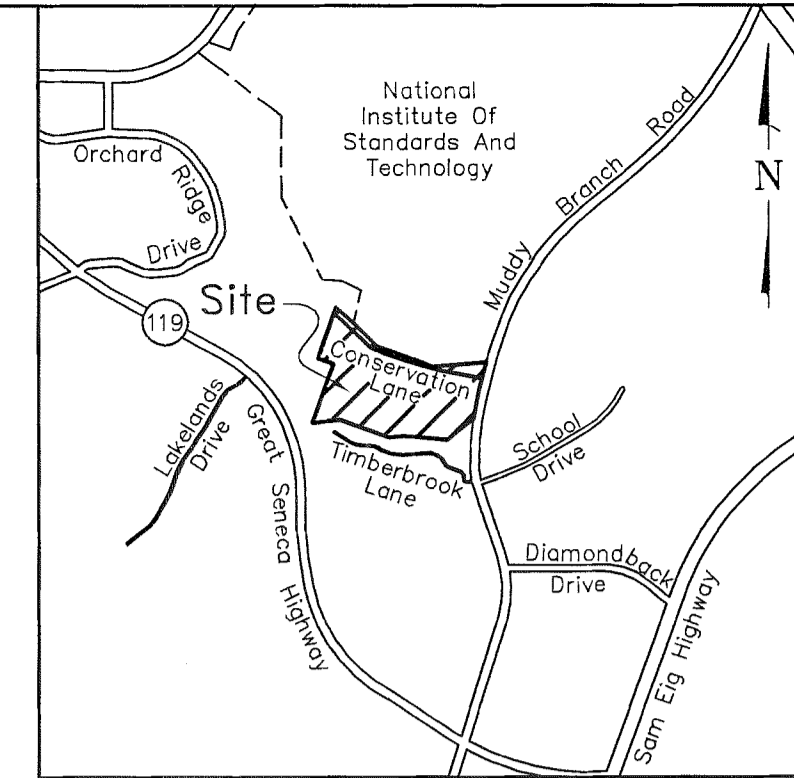
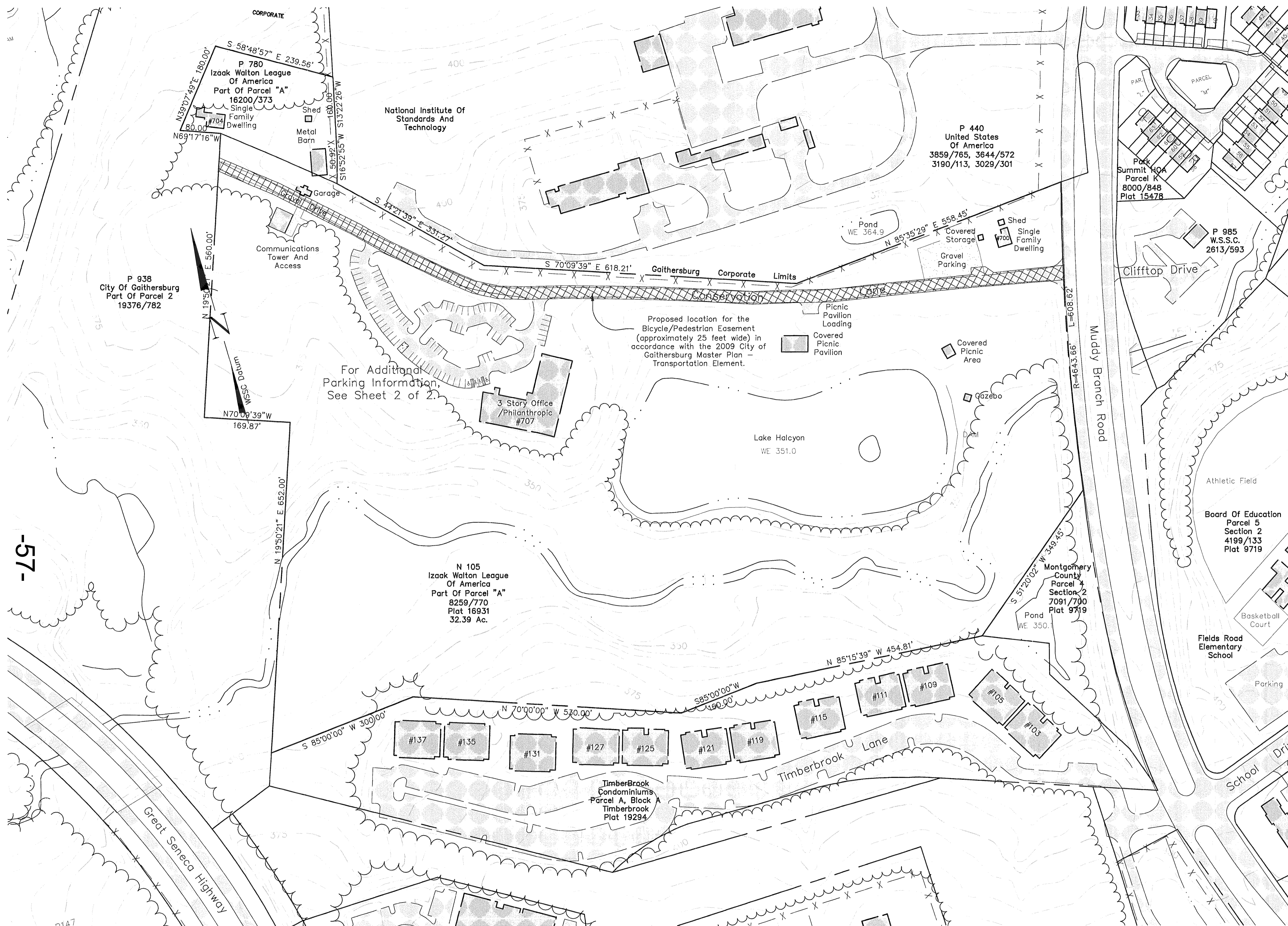
Date: 10/10/06



City of Gaithersburg Zoning Map

707 Conservation Lane denoted by





VICINITY MAP
SCALE 1" = 2,000'

Property Information

Original Lot:	Parcel A, Izaak Walton League Of America Addition to Gaithersburg Plat No. 16931
Original Lot Size:	1,834,814 Sq. Ft. or 42.1215 Acres
Property Sale:	424,184 Sq. Ft. or 9.7379 Acres Parcel A, Block A, Timberbrook Plat No. 19294 Liber 11964 Folio 673
Existing Lot:	Part of Parcel A, Izaak Walton League Of America Addition to Gaithersburg Plat No. 16931
Existing Lot Size:	1,410,636 Sq. Ft. or 32.3837 Acres
Existing Lot:	P 780 Liber 16200 Folio 373
Existing Lot Size:	50,308 Sq. Ft. or 1.1549 Acres
Area of Existing Lots Combined:	1,460,944 Sq. Ft. or 33.5386 Acres
Existing Zone:	R-A
Proposed Zone:	MXD
Existing Use:	Philanthropic Organization Special Exception (A-343 (c))
Proposed Use:	Philanthropic Organization / Office

Site Analysis

	REQUIRED	PROVIDED
Minimum Lot Size: 24-160D.2. (b)	10 Acres	33.5386 Acres
Maximum Floor Area Ratio: 24-160D.4. (b)	0.75	0.024
Minimum Building Setback: 24-160D.5. (2)b.	100 feet	970 Feet (East) 160 Feet (North) 360 Feet (West) 520 Feet (South)
Minimum Green Area: 24-160D.6. (a)	25% or 365,236 Sq. Ft.	89.7% or 1,310,236 Sq. Ft.

For Parking Analysis, See Sheet 2 of 2.

Note: All floor areas are taken from the "Site Development Plan, Parcel A, Izaak Walton League of America" dated 5/7/87 (and last revised 7/16/93) as prepared for Amendment to Special Exception A-343(D) and approved by the Board of Appeals on 10/14/93.

CITY OF GAITHERSBURG MAYOR & COUNCIL
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877

SCHEMATIC DEVELOPMENT
PLAN APPROVAL

AT THE REGULARLY SCHEDULED MEETING OF THE MAYOR AND
CITY COUNCIL HELD ON October 1, 2012

APPLICATION NO. SDP-12-001 WAS GRANTED

SCHEMATIC DEVELOPMENT PLAN APPROVAL

BY RESOLUTION R-63-12 WITH ONE (1) CONDITIONS

DATE Oct. 9, 2012 BY *Trudy M. Walton*

NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE
REAPPROVED BY THE MAYOR & CITY COUNCIL

CITY OF GAITHERSBURG MAYOR & COUNCIL
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877

SKETCH PLAN APPROVAL

AT THE REGULARLY SCHEDULED MEETING OF THE MAYOR AND
CITY COUNCIL HELD ON October 1, 2012

APPLICATION NO. Z-317 WAS GRANTED

SKETCH PLAN APPROVAL

BY ORDINANCE O-7-12 WITH NO (0) CONDITIONS

DATE Oct. 9, 2012 BY *Trudy M. Walton*

NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE
REAPPROVED BY THE MAYOR & CITY COUNCIL

TAX MAP FS123

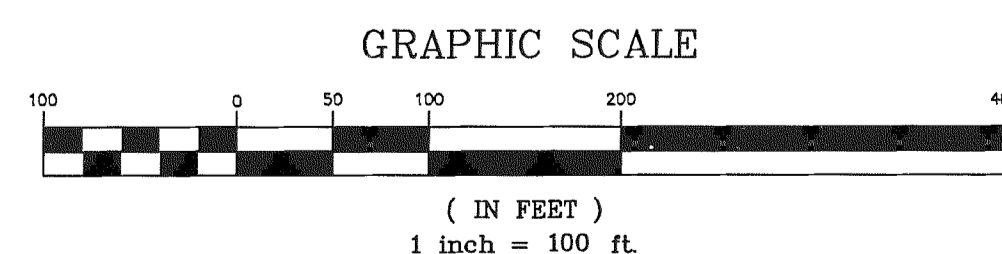
WSSC 222NW11

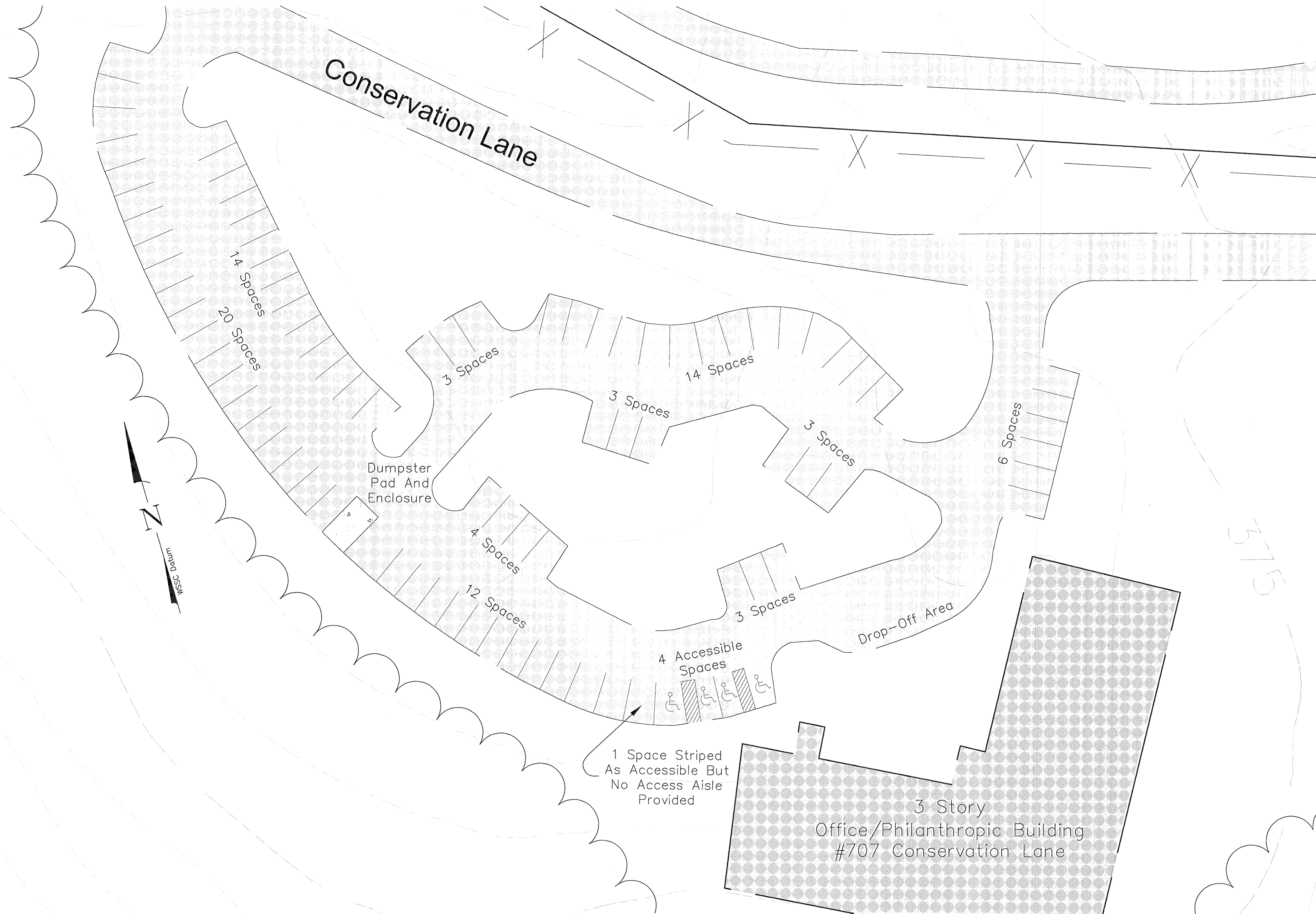
Board of Appeals
BOA-3237-2013
Exhibit #17

Sketch Plan / Schematic Development Plan
P780 and Part of Parcel A
Izaak Walton League Of America
Addition To Gaithersburg
9th Election District - City Of Gaithersburg - Maryland

	Macris, Hendricks & Glascock, P.A. Engineers ■ Planners Landscape Architects ■ Surveyors	Proj. Mgr. pjh	Designer pjh
9220 Wightman Road, Suite 120 Montgomery Village, Maryland 20886-1279	Phone 301.670.0840 Fax 301.948.0693 www.mhga.com	Date 7/30/2012	Scale 1"=100'
		Project No. 1986.228.21	Sheet 1 of 2

NO.	DATE	DESCRIPTION	BY
1	9/14/12	Add Bicycle/Pedestrian Easement	PJN





Parking Analysis

Parking Requirements:

Philanthropic and charitable institutions:
1 space per employee plus,
1 spaces per 400 Sq. Ft. of visitor's floor area

General Office:	1 space per 300 Sq. Ft.	
	<u>REQUIRED</u>	<u>PROVIDED</u>
Izaak Walton League Employees: 23	23	23
Visitor Area: 2280 Sq. Ft.		
	2280/400 = 6	6
General Office (Lease Area): 13,067 Sq. Ft.		
	13,067/300 = 44	44
Total:	73 spaces	87 spaces

Parking Distribution:

Standard Spaces (9'x 17' minimum):	83
Accessible Spaces (8'x 17' min. plus access):	4
Total	87 spaces

Note: All floor areas and employee counts are taken from the "Site Development Plan, Parcel A, Izaak Walton League of America" dated 5/7/87 (and last revised 7/16/93) as prepared for Amendment to Special Exception A-343 (D) and approved by the Board of Appeals on 10/14/93.

CITY OF GAITHERSBURG MAYOR & COUNCIL
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877

SKETCH PLAN APPROVAL

AT THE REGULARLY SCHEDULED MEETING OF THE MAYOR AND CITY COUNCIL HELD ON October 1, 2012

APPLICATION NO. Z-317 WAS GRANTED

SKETCH PLAN APPROVAL
BY ORDINANCE O-7-12 WITH No (0) CONDITIONS.
DATE Oct. 9, 2012 BY Frank M. Walther

NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE REAPPROVED BY THE MAYOR & CITY COUNCIL

CITY OF GAITHERSBURG MAYOR & COUNCIL
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877

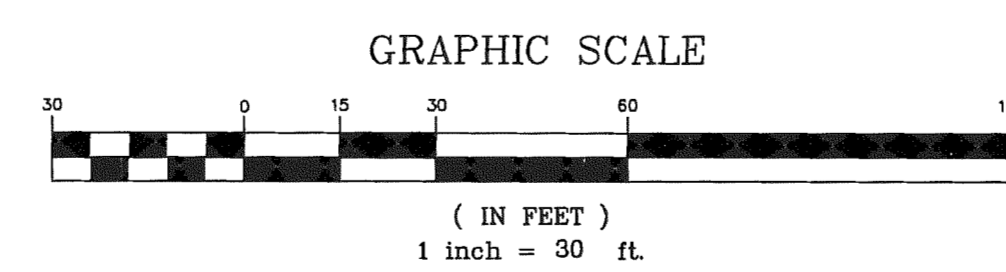
SCHEMATIC DEVELOPMENT PLAN APPROVAL

AT THE REGULARLY SCHEDULED MEETING OF THE MAYOR AND CITY COUNCIL HELD ON October 1, 2012

APPLICATION NO. SDP-12-001 WAS GRANTED

SCHEMATIC DEVELOPMENT PLAN APPROVAL
BY RESOLUTION R-63-12 WITH One (1) CONDITIONS.
DATE Oct. 9, 2012 BY Frank M. Walther

NOTE: ANY REVISIONS TO SIGNED PLANS MUST BE REAPPROVED BY THE MAYOR & CITY COUNCIL



TAX MAP FS123 WSSC 222NW11

Sketch Plan / Schematic Development Plan
Part of Parcel A

Izaak Walton League Of America
Addition To Gaithersburg
9th Election District - City Of Gaithersburg - Maryland

	Macris, Hendricks & Glascock, P.A. Engineers ■ Planners Landscape Architects ■ Surveyors	Proj. Mgr. pjn	Designer pjn
	9220 Wightman Road, Suite 120 Montgomery Village, Maryland 20886-1279	Phone 301.670.0840 Fax 301.948.0693 www.mhgpa.com	Date 7/30/2012
			Scale 1"=30'
			Project No. 1986.228.21

Sheet
2 of 2

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

AN APPLICATION REQUESTING AN AMENDMENT TO SPECIAL EXCEPTION A-527 TO ERECT A 100-FOOT TELECOMMUNICATIONS MONOPOLE AND RELATED ANTENNAS AND GROUND EQUIPMENT LOCATED AT 707 CONSERVATION LANE, PARCEL N105 GAITHERSBURG, MARYLAND. ACCESS TO THE SITE IS VIA AN EXISTING ACCESS ROAD ON THE PROPERTY. THE PROPERTY IS LOCATED IN THE R-A (LOW DENSITY RESIDENTIAL) ZONE. THE SPECIAL EXCEPTION IS ALLOWED BY SECTION 24-25 (11) OF THE CITY OF GAITHERSBURG ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE) IN COMPLIANCE WITH SECTION 24-167A(D).

A-527 (B)

O P I N I O N

This matter has come before the Board of Appeals as an amendment to special exception A-527, by Nextel Communications of the Mid-Atlantic by General Dynamics Network systems, Inc. & T-Mobile Northeast to erect a Telecommunications facility, a 100-foot monopole with twelve (12) antennas at the 97-foot height and six (6) additional antennas at the 90-foot height. The facility will also house ground equipment at 707 Conservation Lane, Parcel N105, Gaithersburg, Maryland. Access to the site is via an existing access road on the property. The property is located in the R-A (Low Density Residential) Zone. The special exception is allowed by §24-25(11) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) in compliance with §24-167A(D). The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and §24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [§24-25(11)] in the R-A Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

On February 8, 2007 the Board of Appeals granted a special exception for a telecommunications facility (monopole, antennas and related equipment) at 707 Conservation Lane. The property is owned by the Izaak Walton League of America. The special exception was granted with the following eleven (11) conditions:

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or their successors cease to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
3. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
4. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
5. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
6. Prior to the application of building permit, applicant to revise fence detail to remove barbed wire and indicate fence material as black vinyl chain link fence up to 8 feet in height;
7. Prior to the application of building permit, applicant is to revise site plan to include grading and reforestation requirements in accordance with Section 22-9 of the City Code;
8. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
9. Installation of antennas and associated equipment must be completed by February 8, 2008;

10. If the installation is not complete by February 8, 2008, the petitioner must request a time extension, in writing, prior to February 8, 2008 and each subsequent year thereafter until such time as the installation is complete;
11. Prior to the issuance of a building permit, applicant is to submit a final plan, to be approved by staff, indicating how the monopole will be camouflaged to blend with the trees.

On February 14, 2008, the Board of Appeals granted a time extension to A-527. The amendment to the special exception, A-527(A) was granted with the following eight (8) conditions:

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or their successors cease to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
3. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
4. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
5. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
6. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
7. Installation of antennas and associated equipment must be completed by February 8, 2009;
8. If the installation is not complete by February 8, 2009, the petitioner must request a time

extension, in writing, prior to February 8, 2008 and each subsequent year thereafter until such time as the installation is complete;

On February 3, 2009, the agent for the applicant, James R. Michael, Esq., of Jackson & Campbell, P.C., forwarded a letter to the Board of Appeals requesting another one-year extension of A-527 so that it may complete its installation of the facility. No changes to the facility were proposed.

The Board of Appeals reviewed the amendment request at its regular meeting on Thursday, February 12, 2009, at 7:30 p.m. at City Hall. Planner Seiden noted that a public hearing is not required for an amendment to an existing special exception. The Board reviewed three exhibits, including a draft resolution. Planner Seiden noted that Condition #1, of the resolution A-527(A) had been met and was, therefore, eliminated from the draft resolution. There was no testimony either for or against the application.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL

* * *

Sec. 24-25 . Uses permitted as special exceptions.

* * *

- (11) Telecommunications facilities, subject to requirements of Section 24-167A(C)(2).

* * *

Section-24-167A. Satellite television antennae and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or telecommunications facilities.

* * *

- (D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are

allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennae may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) Public Property.
 - (i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the City shall be at the discretion of the City Council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The City Council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the City.
 - (ii) A private telecommunications facility may be located on public property of or attached to an existing structure owned or operated by a county, state, federal or other non-City governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions

and requirements as are applicable to such facilities on privately owned property.

- (e) All such antennae shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
 - (1) Complies with all of the standards contained in Section 167A(D)1.

- (2) The location selected is necessary for the public convenience and service.
- (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
- (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
- (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennae and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennae. The holder of a special exception may not refuse to permit the co-location of two additional antennae and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
 - (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
 - (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.
- (b) Area requirements.
- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
 - (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
 - (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
 - (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
 - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
 - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

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ARTICLE VII. Board of Appeals.

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Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

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- (b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of the petitioner's testimony and exhibits of record, the testimony of the petitioner's witnesses and representations of the petitioner's attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

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Sec. 24-189. Findings required.

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(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

(1) Is a permissible special exception within the zone and that the application therefore complies with all procedural requirements set forth in this article chapter and the development standards for the zone within which the intended use will be located;

(2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

(5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

(6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Sec. 24-191. Special exception implementation, modification and abandonment.

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(b) The board of appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any city department or the planning commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

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Findings and Conclusions

The Board finds that the request of the special exception holder does not require a public hearing and that a one-year time extension does not alter any previous findings that the application complies with all requirements for the development of a telecommunications facility.

Based on the appellants' arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain a 100-foot monopole with twelve (12) panel-type antennas measuring approximately 58 inches high by seven- (7) inches wide by four (4) inches in depth at the 97-foot elevation of the monopole and an additional six (6) panel antennas measuring approximately 53 inches high by thirteen (13) inches wide by four (4) inches in depth at the 90-foot elevation. The petition also includes a Nextel equipment shelter measuring 12' x 20' located within a fenced 34' x 30' compound and three (3) T—Mobile equipment cabinets, each measuring 70" x 51" on a fenced 10' x 20' concrete platform. The location of the monopole and antennas is within the R-A (Low-Density Residential) Zone and is allowed by special exception as stated in §24-25(11) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the height of the monopole is 100 feet in height. The unmanned equipment cabinets for the antennas are located on the ground, north of the monopole in two adjacent compounds, all of which is surrounded by an eight- (8) foot high black vinyl chain link fence. The compound is located off an existing gravel access road in a forested area and does not require additional screening. The propagation maps have shown that the location selected will enhance the coverage of Nextel and T-Mobile telecommunication service for public convenience and service and fill a void within the systems of the providers.

The Board finds that the petitioner has proved that the petition is permissible by §24-25(11), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the 2003 Land Use Master Plan. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in §24-167A(D)(1) and (2) as discussed above. The applicant's testimony and coverage maps have indicated the need for additional service in the area and have shown that locating on rooftops on existing buildings is impractical. The applicant has therefore, established the need for a monopole, as required for Board of Appeals approval, per Section 24-167A(D)(2)(a)(2) .

The testimony of the petitioner's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

The petitioner has indicated that there is sufficient space for the co-location of a third telecommunication facility in compliance with §24-167A(D)(2)(a)(5), which would be the subject of a separate special exception application in order to locate additional facilities. The petitioner has shown that this petition, with the added conditions, is in harmony with the general character of the neighborhood in relation to the design and scale of the monopole. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The land and structure will not increase the need for more services. The applicant has shown that this use is not located near or within any of the City's historic districts. In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility with conditions as stated below. The petition has shown compliance with §24-167A(D)(1) and (2) and §24-189(b).

RESOLUTION

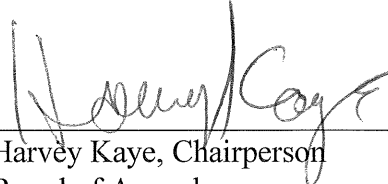
NOW, THEREFORE, BE IT RESOLVED, by the Board of Appeals of the City of Gaithersburg on the 12th day of February, 2009, that Case A-527(B), the petition of James Michal, Esq. for Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. & T-Mobile Northeast, LLC, requesting a special exception for a telecommunications facility in the R-A (Low Density Residential) Zone at 707 Conservation Lane, Parcel N105, Gaithersburg, Maryland, be APPROVED with the following seven conditions:

1. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
2. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics

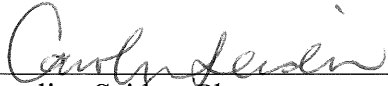
Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;

3. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
4. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
5. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
6. Installation of antennas and associated equipment must be completed by February 8, 2010;
7. If the installation is not complete by February 8, 2010, the petitioner must request a time extension, in writing, prior to February 8, 2010 and each subsequent year thereafter until such time as the installation is complete;

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 12th day of February, 2009. Board Members Kaye, Knoebel, Trojak, Rieg, and Friend being present and voting in favor of the action.

 3/5/2009
Harvey Kaye, Chairperson DATE
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in a public meeting assembled, on the 12th day of February, 2009



Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION BY VERIZON WIRELESS REQUESTING AN AMENDMENT TO SPECIAL EXCEPTION A-527(B) TO PERMIT THE ADDITION OF A SECOND CARRIER UTILIZING 12 ADDITIONAL PANEL ANTENNAS AND RELATED GROUND EQUIPMENT, TO THE EXISTING TELECOMMUNICATIONS FACILITY ATTACHED TO SBA TOWERS IV MONOPOLE MD-46713-A-03 (ORIGINALLY TOWERCO MONOPOLE MD-WSH0674-A), LOCATED IN THE MXD (MIXED USE DEVELOPMENT) ZONE, AS ALLOWED BY SECTION 24-160D.3.(d) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), AT 707 CONSERVATION LANE, GAITHERSBURG, MARYLAND.

BOA-3237-2013

OPINION

This matter has come before the Board of Appeals as an amendment to special exception A-527(B) petition by Harold Bernadzikowski, Network Building & Consulting LLC, on behalf of Verizon Wireless, to permit the addition of a second carrier utilizing 12 additional panel antennas and related equipment to the existing telecommunications facility located on SBA Towers IV Monopole MD-46713-A-03 (originally TowerCo Monopole MD-WSH0674-A), currently consisting of one carrier utilizing six (6) panel antennas and related equipment. The property is located in the MXD (Mixed Use Development) Zone. The special exception is allowed by Section 24-160D.3.(d) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), subject to the requirements of Section 24-167A(D)(2). The Board's authority in these matters is provided pursuant to Subtitle 3, Title 4, *Land Use Article*, of the Maryland Annotated Code and §24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [§24-160D.3.(d)] in the MXD Zone. The purpose of a use by

special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

On February 8, 2007, the Board of Appeals granted a special exception to Nextel and T-Mobile for the construction of a 100-foot high monopole for use as a telecommunications facility with two carriers utilizing eighteen (18) panel antennas and a screened 30 x 35 feet (1,050 square feet) ground equipment area, located at 707 Conservation Lane. The property is owned and occupied by the Izaak Walton League of America and was located in the R-A (Low Density Residential) Zone, Gaithersburg, Maryland. The property was re-zoned to MXD (Mixed Used Development) in 2012 as part of Z-317. The special exception, A-527, which permitted a telecommunications facility, was granted with the following eleven (11) conditions:

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or their successors cease to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
3. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
4. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
5. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
6. Prior to the application of building permit, applicant to revise fence detail to remove barbed wire and indicate fence material as black vinyl chain link fence up to 8 feet in height;
7. Prior to the application of building permit, applicant is to revise site plan to include grading and reforestation requirements in accordance with Section 22-9 of the City Code;
8. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;

9. Installation of antennas and associated equipment must be completed by February 8, 2008;
10. If the installation is not complete by February 8, 2008, the petitioner must request a time extension, in writing, prior to February 8, 2008 and each subsequent year thereafter until such time as the installation is complete;
11. Prior to the issuance of a building permit, applicant is to submit a final plan, to be approved by staff, indicating how the monopole will be camouflaged to blend with the trees.

On February 14, 2008, the Board of Appeals granted a time extension to A-527. The application identified as Amendment to the Special Exception A-527(A) was granted with the following eight (8) conditions:

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or their successors cease to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
3. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
4. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
5. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
6. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
7. Installation of antennas and associated equipment must be completed by February 8, 2009;
8. If the installation is not complete by February 8, 2009, the petitioner must request a time extension, in writing, prior to February 8, 2008 and each subsequent year thereafter until such time as the installation is complete;

On February 12, 2009, the Board of Appeals granted another time extension to A-527(A). The Amendment to the Special Exception, A-527(B) was granted with the following seven (7) conditions:

1. At such time as either Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC, or their successors ceases to operate, its antennas, cabinets and associated equipment shall be removed;
2. At such time as Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc., T-Mobile Northeast LLC or its successors cease to operate, the monopole and any remaining equipment shall be removed;
3. Nextel Communications of the Mid-Atlantic by General Dynamics Network Systems, Inc. is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 37 and #38;
4. T-Mobile Northeast LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits # 39 and #40;
5. Prior to issuance of a final occupancy permit, applicant to work with property owner to identify appropriate planting locations and tree species to satisfy reforestation requirements onsite;
6. Installation of antennas and associated equipment must be completed by February 8, 2010;
7. If the installation is not complete by February 8, 2010, the petitioner must request a time extension, in writing, prior to February 8, 2010 and each subsequent year thereafter until such time as the installation is complete.

Since the February 2009 extension, only six antennas for one carrier, T-Mobile Northeast LLC, have been installed.

On September 9, 2010, the Board of Appeals granted an amendment to special exception A-527(B) to Clearwire Wireless Broadband for a second carrier utilizing three (3) WiMAX panel antennas and related equipment to the existing telecommunications facility. The amendment to the special exception, A-527(C) was granted with the following four conditions:

1. At such time as Clearwire Wireless Broadband ceases to use this facility, the antennas, cabinet and associated equipment shall be removed by the applicant at the applicant's expense;
2. Clearwire Wireless Broadband is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibit #9;

3. Installation of antennas and associated equipment must be completed by September 9, 2011;
4. If the installation is not complete by September 9, 2011, the petitioner must request a time extension, in writing, prior to September 9, 2011 and each subsequent year thereafter until such time as the installation is complete.

The petitioner did not request a time extension prior to September 9, 2011 and the petition has, therefore, expired.

On August 7, 2013, Mr. Harold Bernadzikowski on behalf of Verizon Wireless filed an amendment to special exception request to add a second carrier utilizing twelve (12) panel antennas and related equipment to the existing telecommunications facility.

The Board of Appeals reviewed the amendment request at its meeting on Thursday, October 17, 2013, at 7:30 p.m. at City Hall. The Board reviewed 19 exhibits, including a Petitioner's Statement with summary of proof, plans with tower and antenna specifications, equipment cabinet details, coverage projection maps, facility photographs, and a draft resolution. Planner Seiden noted that because the amendment request did not substantially change the nature, character or intensity of the use, no public hearing was required. She also stated that the conditions of the original approval resolution had either been met or were not applicable to this petitioner and were, therefore, not included in the draft resolution. Mr. Bernadzikowski testified in support of the petition. There was no additional testimony either for or against the petition.

Following the testimony and arguments, the Board closed the record and made a motion to approve the amendment to the special exception.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

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ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

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DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENTS

Sec. 24-160D.3. Uses permitted

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- (d) Special exception uses.

Telecommunications facilities, subject to the requirements of section 24-167A(D)(2).

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ARTICLE IV. SUPPLEMENTARY ZONE REGULATIONS

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Sec. 24-167A. Satellite television antennas and towers, poles, antennas, and/or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

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(D) Telecommunications facilities.

1. *Standards when allowed as permitted use.* The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.
 - (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least thirty (30) feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least thirty (30) feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than twenty-five (25) percent of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than twenty-five (25) percent of the roof area may be approved by the Board of Appeals as a special exception in accordance with subsection 2 of this section.
 - (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free-standing monopole including antenna structure for a telecommunications facility is permitted up to one hundred ninety-nine (199) feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half ($\frac{1}{2}$) foot for every foot of height from adjoining non-residential properties.

- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed five hundred sixty (560) square feet and twelve (12) feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) *Public Property.*
 - (i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the City shall be at the discretion of the City Council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The City Council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the City.
 - (ii) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by a county, state, federal or other non-City governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.
- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three (3) telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three (3) telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two (2) monopoles may be located within one thousand (1,000) feet of

each other in any zone in which such facilities are permitted uses. In any such zone, more than one monopole may be permitted on a lot or parcel and two (2) or more monopoles may be located within one thousand (1,000) feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two (2) or more monopoles within one thousand (1,000) feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

- (j) Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) A petition for a special exception for a telecommunication facility may be approved by the Board of Appeals if the Board finds that:
 - (1) Complies with all of the standards contained in Section 24-167A(D)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than three hundred (300) feet from either the nearest boundary of a historic district or more than three hundred (300) feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related

unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two (2) additional antennas and related equipment buildings or cabinets unless co-location is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.

- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the Board of Appeals must find that the building is at least thirty (30) feet in height in any multifamily residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multifamily residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
- (8) In any residential zone the Board of Appeals must find that the equipment building or cabinet does not exceed five hundred sixty (560) square feet and twelve (12) feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three (3) feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
- (9) The Board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The Board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional ten (10) percent. The board must also find that the structure is not visually intrusive.

- (11) The Board must also find that a free-standing monopole or other support structure is proposed to hold no less than three (3) telecommunications carriers. The board may approve a monopole or other support structure with fewer than three (3) telecommunications carriers if the applicant establishes that: (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna; or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
- (4) The Board of Appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the Board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the Board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location requirements for structures. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.

- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half ($\frac{1}{2}$) foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the Board.
- (f) Removal of telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

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ARTICLE VII. BOARD OF APPEALS

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Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

- (b) Special Exceptions. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The Board of Appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the Board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be

deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

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Sec. 24-189. Findings required.

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- (b) *Special Exceptions.* A special exception may be granted when the Board of Appeals finds from the evidence of record that the proposed use:
- (1) Is a permissible special exception within the zone and that the petition complies with all procedural requirements set forth in this article;
 - (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located;
 - (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;
 - (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
 - (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
 - (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
 - (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
 - (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

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Sec. 24-191. Special exception implementation, modification, and abandonment.

- (a) The Board of Appeals shall prescribe a time limit in which the special exception is required to be completed. The Board of Appeals shall conduct a public hearing upon the failure to complete the special exception within the prescribed time and following the public hearing may terminate the special exception. The Board may, upon written request and for good cause shown, extend the time for completion of the special exception.
- (b) The Board of Appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any City department of the Planning Commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the Board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

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Findings and Conclusions

Based on the petitioner's arguments, binding testimony and evidence of record, the Board finds that the petitioner proposes to add a second carrier, Verizon Wireless, and to construct, operate and maintain 12 panel antennas, six of which measure approximately 72" x 14.6" x 8" and six of which measure 69" x 6.7" x 4," and related equipment, which will be attached to SBA Towers IV Monopole MD-46713-A-03 at a height of approximately 97.0 feet. The aforementioned antennas are in addition to the existing six (6) panel-type antennas used by T-Mobile attached to the monopole at a height of approximately 90.0 feet. The petition further proposes to construct one associated equipment shelter measuring 11'7" x 16' x 10' and 4 x 10 foot generator, located within an existing fenced and screened 30 x 35 foot (1,050 square foot) compound at the base of the monopole. The location of the antennas, cabinet, and related equipment is within the MXD (Mixed Use Development) Zone and is allowed by special exception as stated in Section 24-160D.3.(d) of the Zoning Ordinance (Chapter 24 of the City Code).

The petitioner has shown that the height of the Monopole MD-46713-A-03 is approximately 101 feet, maintaining its existing height. The proposed panel antennas will be mounted on the monopole at a height of 97.0 feet and no portion of any antenna will extend above the top of the monopole. A black vinyl chain link fence surrounds the monopole, equipment cabinets, concrete pads, and related equipment. The entire site

is further screened from all directions by existing second-growth forest on the Izaak Walton League property. The visual impact of the proposed antennas is minimal due to the remote location of the tower, the size of the existing tower, the number of existing towers in the immediate vicinity and the size of the antennas. The propagation maps have shown that the location selected will enhance the coverage of Verizon Wireless telecommunication service for public convenience and service and will fill a void within the system of the provider.

The Board finds that the petitioner has proved that the special exception is permissible by Section 24-160D.3.(d), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the 2003 Master Plan in which this property is located and the property's sketch and schematic development plan. The petitioner has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)1 and 24-167A(D)(2) as discussed above.

The testimony of the petitioner's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The petitioner has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the proposed antennas are attached to an existing monopole that is approximately 101 feet in height, the proposed antennas are efficiently co-located on the tower with another telecommunication carrier (T-Mobile). The proposed antennas are small in size in comparison to the monopole and the ground equipment will be screened. The petitioner has shown that this petition is in harmony with the general character of the neighborhood in relation to the design and scale of the antennas. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The land and structure will not increase the need for more services. The petitioner has shown that this use is not located near or within any of the City's historic districts. In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility. The petitioner has shown compliance with Sections 24-167A(D)1, 24-167A(D)2, and 24-189(b).

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 17th day of October, 2013, that Case BOA-3237-2013, the petition of Harold Bernadzikowski, Network Building & Consulting LLC, consultant to Verizon Wireless, requesting an amendment to special exception A-527(B) to add a second

carrier utilizing 12 panel antennas and related equipment to the existing telecommunications facility located in the MXD (Mixed Use Development) Zone, attached to SBA Towers IV Monopole MD-46713-A-03 at 707 Conservation Lane, Gaithersburg, Maryland, be APPROVED with the following conditions.

1. At such time as Verizon Wireless ceases to use this facility, the antennas, cabinet and associated equipment shall be removed by the petitioner at the petitioner's expense;
2. Verizon Wireless is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibit #9;
3. Installation of antennas and associated equipment must be completed by October 17, 2014;
4. If the installation is not complete by October 17, 2014, the petitioner must request a time extension, in writing, prior to October 17, 2014 and each subsequent year thereafter until such time as the installation is complete.
5. Applicant to remove Clearwire antenna details from Tower Elevation drawing, Sheet C-2 (Exhibit #5), prior to the issuance of any permits.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 17th day of October, 2013. Board Members Kaye, Macdonald, Rieg, Chiswell and Kotok being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 17th day of October, 2013

Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with Section 24-190A of Chapter 24 of the City Code upon its own motion or upon the request of any party; provided such motion or request is received not more than ten (10) days from the date the Board of Appeals renders its final decision.

BOARD OF APPEALS 2014

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BOA Meeting



Submittal Deadline for Next Month's Meeting



Publication/Sign Posting



Planning Commission Meeting



City Offices Closed